

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,
Appellees.

No. 2209.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellees.

No. 2210.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,
Appellees.

No. 2211.

Transcript of Record.

FILE

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VOLUME VIII.

(Pages 2801 to 3200 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

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(Testimony of Ivan R. Cornell.)

Q. When did you become acquainted with him?

A. Why, when I was living in Lewiston.

Q. Was that in the summer of 1903? A. Yes.

Q. Do you know the defendant William F. Kettenbach? A. Slightly. [2486—2156]

Q. Did you meet him about the same time that you met Dwyer?

A. Why, yes. I had seen him quite often there in Lewiston before that. I knew him by sight.

Q. What was your employment while you were in Lewiston in the summer of 1903, Mr. Cornell?

A. Why, I was doing odd jobs of different kinds.

Q. Do you remember of taking up a claim under the timber and stone act?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to his taking up a timber claim in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, and the same is irrelevant and immaterial.

Mr. GORDON.—Q. I asked you if you remembered taking up a timber claim on June 19th, 1903?

A. Yes, sir.

Q. Will you state the circumstances of your taking up a timber claim?

A. How it was that I came to do it?

Q. Yes, from the beginning of it.

A. Why, late one afternoon about the middle of June, 1903, as I was returning to my room, Kester—

Q. That is George Kester?

A. Yes—followed me, and by the time I had got

(Testimony of Ivan R. Cornell.)

to my room and stepped inside and shut the door, why Kester had come up stairs and to the hallway leading to my room, and he called me from the hallway, and when I heard someone call me I stepped out to see who it was. I found Kester in the hallway and I asked him to come in, and asked him what he wanted, and after he had stepped into the room and made a remark or two, why he then asked me if I had ever used my stone and timber right. I told him that I had not. He then asked me if I would like to, and I said no, I thought not; that I expected to go down the Snake River the [2487—2157] next day to Kelly's Bar, and that I had obtained employment there with the White Brothers, who had bought the fruit crop; I think it was the Bishop place on Kelly's Bar. And he was somewhat persistent, and he then said that he knew of a good place where I could use my right in case I wanted to, and he says, "If you will file on this claim that I know of I will pay all your expenses in connection with the filing, and also furnish the money for the purchase price at the time of your final proof, and your expenses of going up there to look at the claim." And we talked the matter over for some few minutes, and during this talk he made the remark that this proposition which he had made me was stretching the law slightly, or to a certain extent; and then I thought the matter over and turned the matter over in my mind for a few minutes longer, and after I had done so he asked the question if it was agreed, and I then replied that I guessed so.

(Testimony of Ivan R. Cornell.)

Q. Now, let me ask you whether or not anything was said at that time as to whether or not you were to make any money out of this?

A. Yes. When he spoke of it, why he said in addition to paying expenses—my expenses—he would give me \$100.00 in addition if I would deed it to him after I got title to it.

Q. Now proceed. You told him you guessed you would accept the proposition?

A. Yes, in substance that is what it was. Well, then he said “You be down to the depot to-morrow morning,” and he asked me if I knew Bill Dwyer, and I told him that I did, and then he said, “Be down to the depot to-morrow morning and Dwyer will meet you there and take you up to look at this claim,” and I said, “All right,” and then he left me. The next morning I was down to the depot ready to go, and Dwyer didn’t arrive in time. By the time he got there the train had left. I met him on my way back from the depot up town. He had driven over; his wife was with him; and when he saw me on the sidewalk why he called to me and asked me what time it was. I told him it was about two minutes after nine, I think it was, and he then said his watch must have been slow, and then he [2488—2158] asked me if I would go the next morning, and I said, “All right.” Well, the following morning we both appeared at the depot, and I met him then, and he bought two tickets.

Q. What kind of tickets?

A. Railroad tickets, one of which he handed to

(Testimony of Ivan R. Cornell.)

me, and I saw then that the destination was Troy. Well, we boarded the train and went up to Troy, where we got off. At Troy Dwyer had hired a team, in which we went up to the claim. I think the distance from Troy to our section was something like 18 miles. Well, on the way out we stopped for lunch at a rancher's house, which was a colored man, if I remember correctly, and after we had got through lunch Dwyer paid him and also for the feed of the horses. We then proceeded on, and after we had gone some distance farther—several miles farther—Dwyer remarked that we had arrived at the land we had come to look at. Well, I got out of the buggy after we had driven on the claim, and walked down to the bottom of the hill, while he drove down. When we had got down there—when I had got down there I noticed a log cabin at the lower end of the claim, and also a small potato patch, enclosed by a rail fence, and this cabin is near the Big Potlatch Creek, which forms the eastern boundary, I think, of this claim. Well, when Dwyer got down there he got out of the buggy, and intended to go into the cabin, I guess; he felt in his pocket for the key and he found that he had left it at home, so he was unable to get in. Well, after we had remained there a few minutes why he turned the team around and went back up the hill—to the top of the hill, while I walked up. He remarked then that he thought if we got back to Troy in time that we could take a freight train which would likely be along. So when I got up to the top of the hill I climbed into the buggy, and we drove

(Testimony of Ivan R. Cornell.)

back to Troy then.

Q. Now, while you were down there at the cabin, did Dwyer say anything to you about the claim that you were to be located on, and that he was showing you?

A. Why, either then or else on the way back I think he explained [2489—2159] that it was a homestead which had been filed on, and—

Q. What is that? I didn't quite catch that.

A. Either while we were there near the cabin or else on the way back to Troy he remarked that the claim was a homestead which had been filed on, and which was going to be relinquished.

Q. Did he tell you who had filed on it as a homestead?

A. Why, it seems to me it was himself; I wouldn't be certain about that.

Q. Now, was anything said about who owned the timber that you had passed through?

A. Why, yes. I think on the way out to the claim we passed through considerable timber, and he remarked that considerable of it belonged to the parties who were associated with him?

Q. Did he tell you who the parties were?

A. No, I don't think he did. He didn't mention the names, but I had something of an idea—

Mr. TANNAHILL.—We object to any idea that you had.

Mr. GORDON.—Q. Well, did he tell you how these people that he was associated with had acquired that timber?

A. Why, my recollection is that he said that they

(Testimony of Ivan R. Cornell.)

had scripped some of it, and got the rest of it in other ways.

Q. Now, you had gotten back to Troy, as I understood it, Mr. Cornell.

A. Yes. When we got back there I think it was about somewhere near six o'clock in the evening, and he took the team back to the livery barn and then we went into the hotel there and ate supper. Well, while we were at supper this freight train that he had spoken of came in, and he got through supper first and stepped out into the office, and in a minute or two he returned and told me that he had paid for supper for both of us. Well, when I got through I went down to the depot and found him there, and we got on to the freight train and returned to Lewiston [2490—2160] that same evening.

Q. Now, did you pay any expense whatever of that trip? A. No.

Q. Now, all the conversation that you had with Mr. Kester that you have related was prior to this trip to the timber, was it not?

A. Up to this time?

Q. Yes. I say, all that you have related was prior to your visit to the timber? A. Yes.

Q. Now, when did you see Mr. Kester again after your return to Lewiston on the freight train?

A. Why, the following forenoon at the Lewiston National Bank. I went in there expecting to meet Dwyer; he said he would be over and have this relinquishment made out, and then I could file on it in the land office. Well, I waited there in the bank all fore-

(Testimony of Ivan R. Cornell.)

noon for Dwyer to come, and he failed to put in an appearance; but he did come over, however, I think—well, between 12 and 1, or about 1 o'clock. I met him there, and when he got to the bank I think Kester was not there; I think he was out at lunch; it was the noon hour. After Dwyer had been there a few minutes in the bank why he stepped out, and when he returned I saw that he had a tin box—was carrying a tin box, and he opened that and looked through it for some papers, and as I recollect he didn't find what he was looking for; so he went out of the bank-room, and I think up stairs to the second floor of the Lewiston National Bank building. He returned in a few minutes. I think soon after that Kester and Kettenbach had returned to the bank from lunch, and then presently all three of them went into Kettenbach's private office in the bank-room and sat down around the table, a flat top desk, and they were there—they remained there I think for something like an hour, or in the neighborhood of an hour, and during that time they carried on a conversation and did some figuring, as I recollect. There seemed to be a difference of opinion arise—I gathered that there was from what I could hear of their talk. [2491—2161]

Q. Do you know what they differed in opinion relative to?

A. No, I couldn't say, only it was something in which they were all three interested, I noticed, and Kester and Kettenbach seemed to differ from Dwyer in their ideas and views, whatever it was they were

(Testimony of Ivan R. Cornell.)

talking about.

Q. How far were you from Mr. Kettenbach's office while this conversation was going on?

A. Why, I was sitting in the front part of the bank-room there, on a bench or settee, in the public part of the bank building.

Q. Was that on the outside of the bank part, where the customers come, or were you inside where the bank employees did their work?

A. I was outside of the part of the bank where the employees did their work—in the public part of it. It was in the extreme western part of the room.

Q. Could you see into the directors' room?

A. Yes—not into the directors' room,—

Q. I mean into Mr. Kettenbach's office?

A. Yes.

Q. Were the walls of glass?

A. The upper part of the walls were; yes.

Q. How high up did the glass begin?

A. Why, I should say three and a half or four feet. The glass extended low enough so that I could see in and see them sitting around this table.

Q. How far away from that office were you, in feet, if you can remember?

A. Well, the private office—Kettenbach's private office is in the extreme southeast corner, or was then.

Q. Well, how far was that from where you were sitting?

A. Why, I should say in the neighborhood of 50 feet, or possibly 60 feet.

Q. From where you were sitting? [2492—2162]

(Testimony of Ivan R. Cornell.)

A. Yes. Of course, that is just my idea of the distance.

Q. All right. Now proceed.

A. Well, after the three of them had been in there, in Kettenbach's private office, for about an hour, they finished their talk, whatever they were discussing, and Dwyer came out to where I was sitting, and I noticed then that he had the paper in his hand which I afterwards learned was a relinquishment of this homestead. He remarked then that he was ready to go upstairs with me.

Q. Now, before they went into the room did Mr. Dwyer and Mr. Kester know that you were in the bank? A. Yes.

Q. And they knew you were waiting to file on the timber claim? A. Yes.

Q. All right. Proceed.

A. Well, when Dwyer made that remark I got up then, and he then handed me \$8.00 in silver.

Q. Who handed you \$8.00?

A. Dwyer. He remarked that that would be the filing fee. Well, we then went out through the door leading to the entrance—to the stair-way going upstairs, and on the stairway we overtook Thomas Mullen, who had an office on the second floor of the bank building. Well, when we caught up with him Dwyer remarked—or handed him this relinquishment, this paper he was carrying in his hand, and remarked to Mullen "Fix this up," and Mullen then took the paper and looked at it and asked Dwyer what he wanted done, and Dwyer said, "Make out a stone and

(Testimony of Ivan R. Cornell.)

timber application for this man.”

Q. Now, was that in the same building as the land office is?

A. Yes; it was on the stairway leading upstairs.

Q. From the bank?

A. From the bank. Well, then Mullen and I went into Mullen's office, and I think Dwyer then went into the land office and left us; and after Mullen had sat down at his desk he turned to a clerk he had there [2493—2163] and told him to get out two stone and timber blank applications. The clerk did so and handed them to Mullen, and then Mullen proceeded to ask me questions on the stone and timber claim—my name, etc., and occupation. Well, after he had given the answers he then asked me in regard to the witnesses, who they were. I gave him the name of Dwyer; that was the only one I could think of. Mullen then explained to me that it would require four—three more—and I was unable to give any more, and the door from Mullen's office opens into the hallway, and it was open at the time, and from where he sat at his desk we could look across the hall into the land office. We could see a part of the public part of the land office, and we noticed that Dwyer was there, was standing there, and Mullen suggested that I go over and call him out and have him come into Mullen's office and give the names of three more witnesses, and I stepped across the hall and called him out and explained the situation to him, and he returned then with me to Mullen's office and gave the names of three more parties, one of whom

(Testimony of Ivan R. Cornell.)

was W. F. Kettenbach, the other two I didn't know; they were strangers. Well, after doing that Dwyer I think left, and then Mullen fastened the papers together—there were three of them, two stone and timber blanks and a homestead relinquishment, and he and I—

Q. Mullen did what? A. After—

Q. You used a word that I didn't understand.

A. After Dwyer left Mullen's office Mullen pinned all three papers together; that is, the homestead application—the homestead relinquishment, I mean,—and the two stone and timber applications; and we then proceeded into the land office. Well, when we got there Mullen handed the papers to the Register, J. B. West.

Q. Now, let me ask you: Did you pay Mr. Mullen anything for that service?

A. No. I will explain that in a few minutes, when I get a little further along. [2494—2164]

Q. All right. Now, before you go any further, let me ask you this: The day that you met Dwyer at the railroad station, before you went to view this land, did you have a letter of introduction to him from Mr. Kester? A. No.

Q. Did you tell him what you came there for?

A. No. He knew what I was there for.

Q. Well, had you talked to him about a timber claim before that? A. No.

Q. Well, proceed, Mr. Cornell.

A. Well, when Mullen handed these papers to the Register in the land office, J. B. West looked at them,

(Testimony of Ivan R. Cornell.)

and the first paper was this homestead relinquishment, and he remarked, "Well, this is a relinquishment," and Mullen said, "Yes," and then he asked him to look at the next page. Well, he did so, and looked them over, and after he got through why he remarked that the charge—it would cost me \$8.00. I handed him the money. After that Mullen and I left and went back to Mullen's office. Mullen then told me that his charges would be a dollar and a half, I think and I then told him that I would see Dwyer in regard to that. I think that same afternoon I went over to Clarkston, some time later in the afternoon, and I met Dwyer driving over to Lewiston; I met him on the bridge, I think. I told him the situation and got in the buggy with him and drove back to Lewiston, and I explained the situation to him, and he said then that he would go up and pay Mullen the dollar and a half, and I think a day or two after that I met Mullen on the street and asked him if Dwyer had paid him, and he said no. I then went into the bank, or a short time after then I went into the bank and told Kester how the matter was, and he handed me a dollar and a half, which I paid Mullen.

Q. Now, I show you timber and stone lands sworn statement signed Ivan R. Cornell, dated June 19th, 1903, and ask you if you signed that paper and filed the same in the land office at Lewiston on or about the date it bears? [2495—2165].

A. Yes; I signed this paper in Mullen's office on that date.

(Testimony of Ivan R. Cornell.)

Q. And that is the paper you have been referring to as having been prepared by Mr. Mullen, and was the one which you paid him a dollar and a half to prepare? A. That is one of them, yes.

Q. And that is the only timber claim you ever took up, is it not? A. Yes, sir.

Q. I show you the testimony of Ivan R. Cornell, given at the final proof, dated September 10th, 1903, and ask you if you signed that paper?

A. Yes, that is my signature.

Q. I show you the cross-examination taken at the same time, and ask you if you signed that paper?

A. Yes.

At this time a recess was taken until two o'clock P. M. [2496—2166]

At two o'clock P. M. the hearing was resumed.

IVAN R. CORNELL, a witness heretofore called in behalf of the complainant, and duly sworn, resumed the witness-stand for further direct examination, and testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You had stated before lunch that the money (the \$8.00) that you paid in the land office was the \$8.00 that Dwyer had given you just before you left the bank; is that correct? A. Yes, sir.

Q. And you had gotten as far as that you had filed the papers in the land office that you had identified. Now, proceed from there and relate the rest of this transaction.

A. Well, I think I had got a little further along

(Testimony of Ivan R. Cornell.)

than that. I had spoke about getting a dollar and a half from Kester, you know, which I paid Mullen.

Q. Yes. Now, take it up from there.

A. Well, possibly a week or ten days after—

Q. Well, wait a minute. I will ask you, did you file that relinquishment also at the land office which you got from Mr. Dwyer?

A. Yes. All three papers were pinned together, and they were all handed to the register at the same time by Mullen.

Q. All right.

A. Well, possibly a week or ten days after making the application I saw Kester, and he asked me if I knew in what paper the advertisement of the application was published, and I told him I didn't know. "Well, then," he says, "you had better go up to the land office and find out." [2497—2167] Well, I did so, and I think I saw clerk Molloy, and he told me—he went through the list of the papers there and found out, and I wrote to the office of this paper—I have forgotten the name of it now—to get a copy, and after I got one—

Q. What paper do you say it was published in?

A. I don't remember now.

Q. Where was the paper?

A. It was either the Troy paper or else a Moscow paper; I couldn't say which now.

Q. All right.

A. And after I received a copy, why I took it in to Kester and showed him, to make sure that the description of the land, etc., was correct; and possi-

(Testimony of Ivan R. Cornell.)

bly a week or ten days after that I saw him again—

Q. This is Kester you saw?

A. Yes—and he asked if I knew on what day I was to make final proof. Well, I told him I didn't. Then he told me I had better go up to the land office and find out. I did so, and afterward told him the time. Then, some time after that, I don't know just how long, why I was passing by the bank one noon, while he was in there in the bank, and he called to me to come in. I did so, and he says, "I have got a blank relinquishment here, which I wish you would take over to"—I think it was M. W. Barnett, or else his brother—"and have him acknowledge it with his seal," and he handed me 25 cents with which to pay Barnett.

Q. Was that a blank relinquishment, or was anything written on it?

A. Possibly there was a description of the land; I think there was nothing more than that.

Q. Did that have to do with the land, or was it something else?

A. Yes; it was for this timber claim that I had taken up. It likely had the description of the land on it; it is my recollection that it did.

Q. Well, is that the second relinquishment that—

A. Well, it was—I will explain what it was. And I took it [2498—2168] over to Barnett's office, and he was a trifle reluctant about stamping it with his seal, but he did so, and finally I paid him 25 cents. And a day or two after that I met Kester on the street—it was after the bank had closed, however,—

(Testimony of Ivan R. Cornell.)

and he asked me if I had it with me, and I said, yes. Well, then, he asked me to come into the bank and sign it, and to have my signature witnessed, and I went in with him and signed it, and then he took it and went out to the Teller, I think it was Bradbury, and requested him and Robnett to witness my signature. Then, after Robnett had signed it why he put it on Kester's desk.

Q. Was that Clarence W. Robnett? A. Yes.

Q. Go ahead.

A. Well, I think that was the last talk I had with Kester until a short time before making final proof. I met him on the street one day, and he said, "Well, I guess a certain number of days will fill out the time," or something like that, and I said I thought so. And then within a few days of the time of making final proof (something less than a week before, I think) I saw Kester again, and I asked him if W. F. Kettenbach would be back in Lewiston by the 10th.

Q. The 10th of what? A. Of September.

Q. 1903?

A. Yes, for I said I would like to have him as one of my witnesses. He says, "Yes, that will be all right; I will look after that."

Q. Where was that conversation?

A. Why, it took place near the bank. I think it was in front of the bank. It was one Sunday afternoon.

Q. All right.

A. And then, I think I made the remark that the question might be asked me on final proof where I

(Testimony of Ivan R. Cornell.)

would get the money from to pay for the land.

Mr. TANNAHILL.—We object to any evidence relative to the final [2499—2169] proof, and any questions which were asked in regard to the final proof, upon the ground that it is irrelevant and immaterial.

Mr. GORDON.—Proceed, Mr. Cornell.

A. Well, he replied that that question would be asked. Then, I told him what I thought I would answer; that is, that I had received the money from my father; and he made no reply to that.

Q. Had you met the receiver and the register of the land office prior to that time, and prior to the time of your filing?

A. Prior to the time of filing?

Q. Yes?

A. Yes, I think I had; that is, I had done a little work, I think, for each of them.

Q. What was the character of the work, Mr. Cornell?

A. Why, I think it was splitting wood, if I remember correctly.

Q. Proceed.

A. And it was on account of that that I made the remark to Kester about the question might be asked where I got the money from; that they would likely observe me in Lewiston, and what kind of work I was doing, etc. And in that same talk, why Kester told me to come in the morning of the 10th, and he would go over the questions that were asked on final proof; and on the morning of the 10th I went to the bank,

(Testimony of Ivan R. Cornell.)

and I met Dwyer at the entrance, just outside. He asked me if I had seen Kester that morning, and I said, no. "Well," he said, "Kester would like to see you and you had better go in and talk with him," and I did so; and then Kester asked me, or told me that I had better go up to the land office and see if there were any other entries on which final proof was to be made that day ahead of me. So I did so, and learned that mine was the only one, and I went back downstairs and told him, and he handed a paper with the questions—the final proof questions on it, and which had been filled out, or the answers to which had been filled out in lead pencil, I think,—he handed this paper to Dwyer, and the two of us went into Kettenbach's private office, where we sat down.

[2500—2170]

Q. Were they the questions and answers and the cross-examination and the formal part of the final proof proceedings?

A. Why, it was—I think there were two papers, as I remember, that had all the questions that were asked at the time of final proof.

Q. All right.

A. And when we had sat down I took the papers and looked them over, and we were in there possibly twenty minutes or half an hour, and after we had been in there a few minutes, why W. F. Kettenbach came into the bank and into his private office, and sat down to his desk.

Q. Now, where were you and Mr. Dwyer at this time?

(Testimony of Ivan R. Cornell.)

A. We were in his office—W. F. Kettenbach's private office—sitting down, at the farther corner from Kettenbach's desk. And in a few minutes after Kettenbach had come in and sat down, why there was some man came into the bank and walked toward Kettenbach's office. When Kettenbach saw him, why he turned to Dwyer and said, "Bill, take him into the directors' room"—referring to me; and we went in there through the—went out of Kettenbach's office and through the part occupied by the enclosures, and through another door into the directors' room, and we were in there just a few minutes, possibly five or ten minutes, and I finished looking over the questions and returned to the part of the bank building occupied by the employees. I told Kester that we were through. He took these papers then and handed them to Robnett.

Q. Took what paper?

A. These final proof blanks, with the answers on them, and handed them to Robnett. Then he—

Q. That was Kester did that, did he?

A. Yes. Then he figured up the amount of money that was required to pay for the land. I think it was \$360.00 that he handed to me. Well, then Dwyer and I—

Q. I will ask you whether or not the claim you entered on was a full quarter section?

A. No; it was a short claim—138 acres, I think it was about [2501—2171] that large. Well, after Kester handed me the money—

Q. Did you say how much he handed you?

(Testimony of Ivan R. Cornell.)

A. \$360.00. Dwyer and I stepped back into the directors' room and walked through it to a front door that leads out into the entrance, to the entrance leading upstairs, and we went upstairs then and into the land office, and were sworn by the register and—

Q. Was that money given you for that purpose, for you to make your final proof? A. Yes, sir.

Q. And to pay for the land? A. Yes.

Q. Proceed.

A. Well, after we were sworn, why the register took my testimony first, and then afterward he took Dwyer's, and I think just before he began to take Dwyer's testimony, why he said he would take Kettenbach's in about 20 or 25 minutes. Well, I went downstairs then in the bank and told Kettenbach the register would be ready for him in about 20 or 25 minutes.

Q. That is, William F. Kettenbach? A. Yes.

Q. Now, you told him that the register would be ready for him to appear as a witness in your final proof? A. Yes, sir.

Q. Was that the first conversation you had had with Kettenbach about the timber claim?

A. Yes, I think it was.

Q. Had it ever been talked over between you and Kester in his presence prior to that time?

A. No, I think not.

Q. Well, all right. Were you and Dwyer going over the questions in Mr. Kettenbach's office when he told Dwyer to take you into the directors' room?

[2502—2172] A. Yes.

(Testimony of Ivan R. Cornell.)

Q. And were you going over them out loud, so that he could hear what was being said?

A. No. I was just reading them over. I think the only remark that Dwyer made was in regard to the amount of timber that was on the claim.

Q. All right. Proceed.

A. Well, after final proof and all witnesses had been made, I was in the land office, and Van Noy told me that the officials would want to look the papers over first before they would issue a receipt, and told me to come back in the afternoon, after lunch. I did so, and went into the room occupied by the receiver. He was then looking at the papers, and I spoke to him and asked him if he was through with them, and he remarked that he was then looking at them, and he asked me one or two other questions himself. He says, "I see here you say you got the money from your father," and then he remarked further that it looked to a man up a tree like Dwyer had—or that I was going to deed the land back to Dwyer after making final proof, and I told him, no.

Q. Who said that? A. The receiver.

Q. Who was that?

A. C. H. Garby. And he offered the remark that "There is a man here now to look into the status of this claim, and others also"—a land office official, he meant; and he also said that "If there is anything wrong found with it, why the money will be forfeited," and after a few minutes, after a little further talk, why he made out two receiver's receipts for the amount, one of which he gave to me.

(Testimony of Ivan R. Cornell.)

Q. What happened next?

A. Well, I then left the land office and went downstairs and to the corner of—to the bank corner (4th and Main, I think it is), and walked East on Main Street toward 5th Street, and after I had gone about half a block why Dwyer overtook me and said that he had a deed for the [2503—2173] land, conveying it from me to Kettenbach and Kester, and that he would like to have me take it over to Otto Kettenbach and have him witness my signature to it.

Q. Was that right after you had received your final receipt, the day that you made your final proof?

A. Yes, within ten minutes afterward.

Q. All right. Did you take the deed to Otto Kettenbach?

A. No, not then. I told Dwyer before I did that I wanted to see Kester and have a talk with him. While I was eating supper that day Kester came into the restaurant where I was and asked me if I had had the deed signed, and I said no, and he remarked that “You had better do it,” and he appeared to be a little excited. Then I told him that I wanted to see him first; I wanted to have a talk with him. I met him later, near the bank, I think about seven o’clock. I then told him some remarks that the Receiver had made.

Q. Now, state what you told him.

A. Well, I think I repeated the remark about what he said in regard to there being a man there for the purpose of looking into that and other claims, as to the regularity of them.

(Testimony of Ivan R. Cornell.)

Q. Do I understand you to say that you told that to Kester? A. Yes.

Q. And that was the day after you made your proof, or was it the same day?

A. No—it was the same day.

Q. The same day, before you had signed the deed?

A. Yes.

Q. Well, what did he say?

A. Oh, he said, “All that man is here for is to look into some timber trespass cases,” or something of that kind. Then I think I called his attention to the fact that the Government was instituting investigations in other states in regard to violations of the timber and stone act. “Oh, well,” he says, “nothing of that kind will happen in Idaho.” “And [2504—2174] then,” he says, “anyway, if there should something of that kind occur, why I would be the man they would get after”—that is, referring to himself; and he says, “You, Dwyer and I are the only persons that know anything in regard to this agreement.” He says, “If we all deny it, how can any trouble come to us?” Well, then, something more was—he then asked me to come into the bank the next day, and that he wanted to change the date of that deed. I went in, and then he went in with me to Kettenbach’s private office and sat down at his desk and changed the date.

Q. Now, was this conversation which you have just given prior to the one you are relating, was that also in the bank?

A. The one I had in the evening of the day I made

(Testimony of Ivan R. Cornell.)

the final proof?

Q. Yes.

A. No; it was on the sidewalk, just outside of the bank. It was after banking hours; it was about seven o'clock. He told me in the restaurant that he would not go home until after the mail came in and was distributed that evening, and would take it to the bank. I met him about seven o'clock. I met him on the street near the bank.

Q. Do you know what date was put in the deed?

A. This deed that was given to me by Dwyer?

Q. Yes. A. Why, the 10th.

Q. And what date was it changed to?

A. The 11th.

Q. All right. You may proceed.

A. I want to say here that in that talk I had with Kester the evening of the 10th I said that I wanted him not to have the deed recorded for six months. "Oh," he says, "I don't intend to have this one recorded; I want another one later on." He says, "In regard to holding it that long," he says, "I don't know," he says, "I have already made arrangements to transfer it."

Q. Did he tell you who he had made arrangements with?

A. No. He says, "When it comes time to do that, why then I will [2505—2175] want another one from you."

Q. Well, did you make another one?

A. I did finally, yes.

Q. And did he return the one you gave him?

(Testimony of Ivan R. Cornell.)

A. Yes.

Q. And the one you gave him was dated the 11th of September, 1903—the first deed?

A. The first one, yes.

Q. And before whom did you acknowledge that?

A. Before Otto Kettenbach.

Q. Now, who paid for the expenses of that deed and the acknowledgment?

A. Why, I'm sure I don't know. I didn't.

Q. And who was the grantee in the second one that you made?

A. W. F. Kettenbach and George Kester.

Q. Now proceed.

A. Well, two or three days after the time of that date when the first one was changed I saw Kester again; I think it was in the evening; and he then asked me if I had it with me, or if I had had it acknowledged by Kettenbach, and I said I had.

Q. That what?

A. He then asked me if I had had the deed acknowledged by Otto Kettenbach, which he had asked me to do. I said that I had, and it was acknowledged, and I don't recall whether I gave it to him that day or the next morning, and I said, "The reason I hadn't been in with it was that I was waiting for the return of the receiver's receipt that I had obtained, that I had got from the land office." I had written for the return of that, to Moscow. I had mailed it to them to have it recorded in the Recorder's office there. And he says, "Oh, you don't need to wait for that"; he says, "come in and I will pay

(Testimony of Ivan R. Cornell.)

you the money, and when that comes back you can give it to me.” I said “all right,” and I may have given the deed to him then, but I didn’t get the money then, because [2506—2176] the bank was closed, and it was in the evening, and I went in the next day and he paid me the money.

Q. Now, do you remember what date that was? You said “the next day” a number of times, and I wanted to know how many days it was after you made your proof, as well as you can remember?

A. Well, I think when I made final proof was toward the last of the week. I don’t remember the exact day of the week, but I think it was the first of the following week, I think, when he paid me the money.

Q. It was within six or seven days?

A. Oh, yes.

Q. Now, state what transpired then, when he paid you the money.

A. Well, when he first spoke to me about filing on the land, in my room in June, he said the \$10.00 I had borrowed from him the day before, that he thought he would deduct from this \$100.00, and I didn’t object to that, and then when I made payment in the land office I had \$4.00 or \$5.00 in change which was given me by the Receiver, and I kept that; so that when Kester settled up with me those two amounts were deducted from the \$100.00; so I received about \$85.00 or \$86.00; and he asked me if I wanted the cash for the payment or if I wanted a certificate of deposit, and I said, “I want part of it

(Testimony of Ivan R. Cornell.)

in cash.” So he turned then to the teller and told him to pay the amount, whatever it was, in cash, and to make out a certificate of deposit for the balance.

Q. Do you remember how much the certificate of deposit was for?

A. Why, I think it was something near \$85.00—\$55.00, I mean.

Q. And did he deliver that to you?

A. The teller did, yes. Then, possibly about two weeks later, I think it was, I saw Kester again; that is, I went in to see him, I think, and told him that I had decided to leave Lewiston, and that if he wanted another deed that he had better have it made out, and so he did so.

Q. Do you know who the grantee in the deed was?

A. The second deed?

Q. Yes. [2507—2177]

A. The same parties: W. F. Kettenbach and Kester—George Kester.

Q. Was it dated?

A. Yes, I think it was. I think the date of that was the 29th of September, or about that time. And Kester told me that he would have one made out, and for me to come in an hour or two later, I think, to get it. Well, I did so, and I took that also to Otto Kettenbach to stamp with his seal; but later I handed that to Kester, and he returned me the first deed.

Q. What did you do with that?

A. Why, I kept it for a while, and I finally burned it up, I think, or tore it up.

Q. Is there anything else relative to the transac-

(Testimony of Ivan R. Cornell.)

tion that you can remember that you have not related?

A. Why, nothing more in Lewiston, no. There are some of these points, that is, in regard to that talk I had with Kester the day I made final proof, that wasn't brought out on either of the other trials, and they are in those statements that I prepared there, and they should have been brought out by Ruick on the redirect examination. He had them, he was in possession of them; but for some reason he didn't do it.

Q. Now, did you ever have any talk with Mr. Kester relative to this transaction after you left Lewiston? A. Yes, sir.

Q. Where?

A. Here in Portland, in the lobby of the Imperial Hotel; that is, the old part of the hotel, before it was changed.

Q. What was that conversation? When was it?

A. Why, it was in the summer of 1905, after I came back from Boise. I went in there one day, looking for my uncle. He frequently went in there, and he was well acquainted with the proprietor of the Imperial; they used to live in the same town in Eastern Oregon. And when I went in my uncle was there, but he was talking with some man, and so I went [2508—2178] back in the back part of the room some distance from the door and sat down and picked up a newspaper, I think. Presently, why Kester came in and walked toward the back part of the room, and I didn't see him until he got pretty

(Testimony of Ivan R. Cornell.)

close to me. He sat down beside me and asked me how I was, how I felt, etc., and then he began to go into the question of the grand jury proceeding in Boise, in July before. He asked me who my attorneys were, etc., and I told him that my uncle was one, and also J. C. Moreland, and then he asked me if I didn't have someone in Boise, and I said yes, that I had sent for a lawyer while I was there; and then he further asked me if I didn't know that they stood at my back, and would have been glad to furnish the money for my bond. I said I thought—I understood something of that kind. Then he also asked me if I intended to stand on my plea of not guilty, and I told him that I didn't care to discuss the matter; I was told not to. Then I think I left him very soon after that, and as I got up he says, "Well, I will see you again," something like that.

Q. Mr. Cornell,—

A. Oh, there is something further he did say, too. He says, "Well," he says, "you have got nothing to fear," he says.

Q. When Mr. Kester first talked with you about taking up a timber claim, on the afternoon when he came to your room that you have told about, what was your understanding that you were to do to make the \$100.00 that Mr. Kester referred to?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, leading and suggestive.

WITNESS.—Why, I think I have stated that.

Mr. GORDON.—Q. Well, but state it over again, please.

(Testimony of Ivan R. Cornell.)

A. Why, in return for the \$100.00 I was to make—I was to go up and look at the land with Dwyer, and make the application, and after getting a deed from the Government I was to deed it to Kester.

Q. Getting what from the Government?

A. Title from the Government, or a deed, I was to deed the land to [2509—2179] Kester.

Q. And I will ask you whether or not you accepted that proposition at that time?

A. Why, I think so. I think my answer would show that, yes.

Q. During the entire transaction did you furnish any of your own money?

A. No. Well, I will qualify that in this way: I think when I returned from Troy, after I got on the train, Dwyer didn't have any small change for the fare, and I think that he—as I now recall—he asked me to let him have some until we got back to Lewiston, when he would get some larger piece changed and hand me the amount that I let him have back. I think that was the only thing that I recall now.

Q. How much was that, Mr. Cornell?

A. Oh, I couldn't say. It was possibly a dollar, or something like that, or a dollar and a half.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Ivan R. Cornell, the testimony of Ivan R. Cornell taken at the final proof, the cross-examination of Ivan R. Cornell, taken at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of

(Testimony of Ivan R. Cornell.)

them, the receiver's receipt and the register's certificate, dated September 10th, 1903, a certified copy of the patent issued to Ivan R. Cornell, dated September 9th, 1904, all relating to the entry of lots 6 and 7, and the east half of the southwest quarter of section 27, township 40 north, of range 1 west, of Boise meridian. We also offer in evidence a certified copy of the receiver's receipt, recorded in the office of the Recorder of Latah County at the request of Ivan R. Cornell September 14th, 1903; also a certified copy of a deed made and executed by Ivan R. Cornell September 29th, 1903, conveying to W. F. Kettenbach and George H. Kester lots 6 and 7, and the east half of the southwest quarter of section 27, township 40 north, of range 1 west, of Boise meridian, acknowledged before Otto Kettenbach, a Notary Public for Nez Perce County, Idaho, September [2510—2180] 29th, 1903, and recorded in the office of the Recorder of Latah County at the request of the Latah County Abstract Company October 10th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to any of them being admitted in evidence in support of Bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, and they are irrelevant and immaterial. And the defendants further severally object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant and immaterial.

(Testimony of Ivan R. Cornell.)

Said documents were thereupon marked by the Reporter as Exhibits 103, 103A, 103B, 103C, 103D, 103E, 103F, 103G, 103H, 103I, 103J, 103K and 103L.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Cornell, how many times have you testified to your arrangements with Mr. Kester in regard to your timber claim? A. How is that?

The last question was thereupon repeated by the Reporter.

A. Why, I think this is the fourth time.

Q. You think this is the fourth time?

A. I think so.

Q. When was the first time you made any statement under oath regarding it—regarding your taking up your timber claim?

A. Why, in Boise, at the grand jury investigation, in 1905.

Q. What was the circumstances of your making that statement?

A. Why, I was subpoenaed to appear there as a witness.

Q. Now, did you make your first statement before the grand jury, or did you make it before some special agent?

A. Why, before appearing before the grand jury I had a talk in the private office of the District Attorney at that time in regard to certain—some features of it. That is the District Attorney was present [2511—2181] and Goodwin and O'Fallon.

Q. What talk did you have with them about it?

(Testimony of Ivan R. Cornell.)

A. Why, the District Attorney told me what the grand jury was going to investigate, and then—

Q. Now, did he tell you that they were going to investigate your actions in regard to your taking up a timber claim?

A. No. He said they would investigate the operations of Kettenbach and Kester, and then he asked me some questions in regard to the matter. He understood that or thought that the situation was like this: That I had been approached by Dwyer. He first asked me how he approached me, or something like that, and then I told him that I hadn't received my information from him; that I got it from Kester. And then, I think he asked me how Kester had approached me, etc.

Q. What did you tell him?

A. Why, I don't recall now just all that was said. I think one thing I stated was that there was no prior agreement to sell the land, and—

Q. You also told him that Dwyer had located you, didn't you, on the claim?

A. Why, possibly I said or may have said that I went up there with Dwyer, but I don't remember in regard to that.

Q. And you told him you had sold your claim to Kester and Kettenbach after you had made your final proof, did you not?

A. Why, I think in substance that was it, yes; that the negotiations had taken place after I had made final proof.

Q. Now, did you also make out a statement there

(Testimony of Ivan R. Cornell.)

in the office and sign it?

A. I didn't sign any, no.

Q. Was a statement taken down to that effect?

A. After Ruick had talked a few minutes, why he excused himself and went upstairs to the grand jury, and left Goodwin and O'Fallon there, and they called in Ruick's stenographer, and then they questioned me [2512—2182] further, and she took down—the stenographer took down what I said; but I never signed that statement.

Q. Well, you told them there that you had no prior agreement? A. Well, about the same thing—

Q. About the same thing as you told Mr. Ruick?

A. Yes. They were present when he was there and heard it all.

Q. I see. Now, did they swear you before they began to ask you questions?

A. In his private office?

Q. Yes. A. No.

Q. Well, what happened next?

A. Well, I think while I was in the room O'Fallon made the remark that "The story you are telling sounds a little suspicious; it differs from the story the other entrymen have told in regard to the way that they were approached." And I think during that talk he said, "There is no disposition to make you any trouble." That was in the forenoon, I think, possibly about 11 o'clock, and then after I returned from lunch I think I saw him again in the hallway, and had a talk further with him about it.

Q. What did he tell you?

(Testimony of Ivan R. Cornell.)

A. Well, I think that at that time, why he turned to Shaeffer, who was standing a short distance away,—

Mr. GORDON.—Q. Who?

A. After I returned from lunch I saw Mr. O'Fallon again in the hallway and had a little further talk with him there, and he turned to Shaeffer—that is, O'Fallon did—

Q. Who is Shaeffer? A. Fred Shaeffer.

Q. Oh—go ahead.

A. — and made the remark about Shaeffer; he says, “There is a man [2513—2183] that has worked for these fellows for a number of years—two or three years, or three or four years—and has taken up a timber claim, and he is going to tell everything that he knows in regard to the matter.” He says, “If he is willing to do that, why shouldn't you do the same thing?”

Mr. TANNAHILL.—Q. And what else was said?

A. Then I think it was in that talk after lunch that he made the remark that if I told that same story before the grand jury that I told in Ruick's office that there would be at a later time another grand jury investigation, which might investigate my testimony before that one that was there, and if they could prove that my story was not so, why it might result in my indictment by another grand jury, and he said they would have three years in which to return an indictment; and then a little further along he made the remark that “If you persist in telling this story we will have you in the peniten-

(Testimony of Ivan R. Cornell.)

tiary within a year.” [2514—2184]

Mr. TANNAHILL.—Q. Do you remember of anything else he said?

A. No, I don't think I do; I don't recall anything just now.

Q. Then you was taken before the grand jury, was you?

A. Well, hold on—something else. He says that “We have looked into your case very carefully,” and he says, “Yours is one of the clear cases,” and he says, “We have looked into your record here, that is, in Lewiston, and also in Portland,” and he says, “We are satisfied that yours is one of the clear cases,” and I think it was after that that he made the remark about that they would land me in the penitentiary within a year.

Q. Then you was taken before the grand jury, was you? A. Late that afternoon, yes.

Q. And you testified before the grand jury that you had no prior agreement, did you?

A. Why, I made that statement while I was in the room, yes.

Q. You was under oath when you made the statement?

A. It was following a good many questions that Ruick asked. Then after he had got through asking the questions he wanted to, then I made the statement myself.

Q. And you told them you had no prior agreement? A. I think so, at that time, yes.

Q. And that you had sold your claim after you

(Testimony of Ivan R. Cornell.)

had made final proof?

A. Yes. Of course, I will state here that my testimony that I gave at that time was to carry out the understanding that I had with Kester, and the day I made final proof, that is, in a talk—

Q. We don't care why you gave it. We want to know what you did, is all.

A. All right. [2515—2185]

Q. Then you was indicted the next day, was you not?

A. Following my appearance before the grand jury, yes.

Q. And you had to furnish a bond, furnish bail?

A. Yes.

Q. And you was discharged on that bond?

A. Yes.

Q. You was released from custody, I mean.

A. Yes.

Q. In relation to the time you was arrested, when was it that you had any talk with any of the Government officials about it again?

A. Why, it was some time afterward.

Q. About how long afterwards?

A. It was here in Portland; it was in October.

Q. Who did you talk to about it?

A. Ruick, at his room in the Portland Hotel.

Q. And he told you that he wanted you to testify for the Government, did he?

A. No, I don't think he expressed it just that way. Before I had this talk with him, why, a motion had been filed to dismiss the indictment.

(Testimony of Ivan R. Cornell.)

Q. That indictment had never been dismissed, had it? A. When?

Q. The indictment hadn't been dismissed, had it?

A. When I had the talk with Ruick?

Q. Yes.

A. No; but I will explain about that. When that was set at Boise, J. C. Moreland was my attorney then, and he requested an interview with Ruick himself, and he went to Boise and had one. It was following that that I had the talk with Ruick here.

Q. Now, what was the talk you had with Ruick here in Portland? [2516—2186]

A. The greater part of the time I spent in reading over a statement of the case, of my connection with it, that I had made.

Q. You gave Ruick a statement of it at that time, did you? A. Yes.

Q. And when had you written out that statement?

A. After my return from Boise.

Q. Now, how long was you holding a conference with Mr. Ruick? A. At his room?

Q. Yes.

A. Why, I was there an hour or an hour and a half.

Q. And you say your uncle was also your attorney?

A. Why, he went to Boise after I had been indicted, and furnished the money for my bond.

Q. Yes.

A. Then had a number of talks with him; yes.

Q. I was asking you if your uncle was your at-

(Testimony of Ivan R. Cornell.)

torney in that case.

A. No, I couldn't say that he was exactly. J. C. Moreland had the greater part of the work.

Q. You say J. C. Moreland talked with Mr. Ruick before you decided to change your evidence?

A. No.

Q. Now, he talked with Mr. Ruick after you left Boise, did he, and came to Portland?

A. I think he was up there in September.

Q. And when was this you was in Boise—in July?

A. Yes.

Q. What month was it that Ruick was up here?

A. I think it was in October.

Q. In October? [2517—2187] A. Yes, sir.

Q. Then, you didn't say what conversation you had with Mr. Ruick in the Portland Hotel.

A. Well, I didn't have very much conversation with him. I said that most of the time I spent in reading over this statement, this testimony. I read it out loud for his benefit.

Q. What did he tell you? What did he tell you?

A. At that time?

Q. Yes.

A. About the only, most important thing was, he said just as he left me, he says, I have—that is, "I assure you of my goodwill."

Q. What did you understand from that—that he would dismiss the indictment against you?

A. No.

Q. You had an idea that he would though, didn't you?

(Testimony of Ivan R. Cornell.)

A. Why, my uncle thought so, and Moreland too.

Q. And you thought so?

A. Yes. Of course, there was no promise made that that would happen, but then—

Q. Now, I wasn't going to ask you that. I was satisfied you would say that if I asked you. But I was asking you what Ruick said and what you thought about it. Now, you expected that when he left you he would dismiss the indictment against you, didn't you?

A. Not from anything he said, but from what I was told by Mr. Moreland, and even before I left Boise I was—

Q. Now, then, Moreland had seen Ruick before you did, hadn't he? A. Yes, sir.

Q. And your uncle had seen Ruick before you did?

A. Yes; but my uncle didn't have much of a talk with Ruick. He didn't go into the merits of it, because he didn't know but very [2518—2188] little about it himself then.

Q. Ruick kept that indictment hanging over you and had it hanging over you at the time you testified at Moscow in May, 1907, didn't he? A. Yes.

Q. And when you testified at Moscow, in May, 1907, is the first time you changed your evidence from that you gave at Boise, isn't it? A. Yes.

Q. Now, had you made out any statement for Ruick or anyone else prior to that time, other than the one you say you made out and read to Mr. Ruick in the hotel over here at Portland?

A. Why, after I arrived in Moscow I had a talk

(Testimony of Ivan R. Cornell.)

with Ruick, and in the meantime I had thought of other things that were not in the first one.

Q. Yes?

A. I told him of those things, and his stenographer took the answers down, and they had those two statements before them at the time I was on the stand in Moscow.

Q. Did Ruick take the statement away with him that you read to him over here in the hotel at Portland? A. Yes, he took it away.

Q. He took it away with him? A. Yes.

Q. And he had that at Moscow? A. Yes.

Q. You had sworn to that, had you?

A. Why, I signed my signature to it; I wasn't sworn to it.

Q. But you swore to the one that was made out for you at Moscow?

A. No, I swore to neither of them.

Q. You didn't swear to either of them? [2519—2189] A. No.

Q. When you signed your sworn statement you swore, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use, and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." You remem-

(Testimony of Ivan R. Cornell.)

ber swearing to that, do you?

A. I attached my signature to that, yes.

Q. You swore to it, didn't you?

A. I signed it in Mullen's office.

Q. And did the register or receiver swear you to it when you went into the land office and filed it?

A. I don't recall now whether they did or not. He asked me some questions in regard to it, read the questions over and asked me some of the answers, and he signed his name to it I think afterwards.

Q. Did you understand that you were swearing to that when you filed the sworn statement?

A. It was my understanding of the law, yes.

Q. You also testified at Boise, in March, 1910, did you not, in a case—

A. Last spring, yes; in February or March.

Q. —a case wherein the United States was plaintiff and Kester and Kettenbach and Dwyer were defendants, in a criminal action, where they were tried for conspiracy to defraud the United States, and in which this same land and this entry of yours of which you are testifying now was involved?

A. I testified, yes at that time. [2520—2190]

Q. You testified there? A. Yes, sir.

Q. And that is the same case in which the jury returned a verdict of not guilty in something like four minutes, is it not? A. Yes.

Q. Now, at Moscow or at Boise you never testified that you talked with Kester in Portland and had this conversation with him here in Portland, did you?

(Testimony of Ivan R. Cornell.)

A. No, but it wasn't my fault that I didn't; it should have been brought out by the Government attorney.

Q. All of these matters was gone into both on cross-examination and direct examination, and you never mentioned it, did you?

A. I told you it wasn't my fault. They could have recalled me on redirect examination. They talked of doing that, and afterwards decided that they wouldn't, so it wasn't my fault.

Q. But you didn't testify to it, did you?

A. No.

Q. And you didn't testify that you had executed these two deeds, did you, either at Moscow or Boise, or before the grand jury, you never testified that you had executed two deeds to this land, did you?

A. I don't recall now whether I did or not, but that statement appears in these other statements though.

Q. You don't remember of it, do you?

A. I don't recall now whether I did or not.

Q. Don't you know that you never testified, either at Boise or Moscow, or before the grand jury, that Kester told you he had arranged to sell the land when you gave him the first deed and he might want another deed?

A. I may not have done so, but what of that? It isn't a very important matter, I think.

Q. Well, it makes no difference what your opinion of it is. I [2521—2191] want your evidence. Now, you never testified at Boise or Moscow, or be-

(Testimony of Ivan R. Cornell.)

fore the grand jury about changing the date on the deed, did you?

A. I don't know whether I did or not now.

Q. Do you have any recollection of it at all?

A. No, not at this time.

Q. Don't you know that you never testified, either at Boise or Moscow or before the grand jury, or at any other time, regarding this conversation you say you had with Kester the day you made your final proof, that if you all stood together or all told the same story there would be no trouble, or words to that effect? A. No, I didn't testify to that.

Q. And you never have testified before that you told Kester what you say C. H. Garby, the receiver, told you, did you?

A. I don't remember now whether I did or not.

Q. Do you have any recollection of ever testifying to that before? A. I couldn't say; I don't—

Q. The reason I am asking you this, I read your evidence over very carefully last night, and these questions I am asking you about don't appear either in your testimony at Moscow or at Boise, and, of course, I don't know what you testified to before the grand jury, but I assume you didn't, because you say you testified that you had no prior agreement.

A. I think I did pretty well to bring in all the points I did at both trials.

Q. I have no doubt you testified to everything you could think of. Now, then, you never testified before that you told Kester that you had been thinking that the question might be asked you where you

(Testimony of Ivan R. Cornell.)

got the money from, and you concluded you would tell them you got your money from your father. You never testified to that either, at Moscow or at Boise last spring, or at any other time, did you, until to-day? [2522—2192]

A. I don't recall whether I did or not now.

Q. Do you have any recollection of ever testifying to it before? A. I couldn't say about that.

Q. Now, then, you testified on your direct examination that you saw Kester and that he asked you if you knew what paper the notice was published in. You never testified to that at Boise or at Moscow or before the grand jury, did you?

A. I couldn't say now at this time.

Q. Now, you remember of testifying at Moscow and at Boise that Thomas Mullen made out your papers, do you not? A. Yes.

Q. And how does it come that you have changed that to-day to his clerk making out your papers?

A. I didn't say that.

Q. Didn't you testify that he turned to his clerk and told him to make out two applications?

A. No, I didn't.

Q. What did you say?

A. I said, or intended to say, that he turned to his clerk and asked the clerk to get out two blank applications, which the clerk did, and handed them to Mullen.

Q. And you heard Mullen testify at Boise that he never made out your papers?

A. I never heard him testify, but I understood he

(Testimony of Ivan R. Cornell.)

did testify that way.

Q. And you know the papers are not in Mullen's handwriting, don't you?

A. No; in fact I know they are.

Q. How do you know it?

A. Because I saw him, stood right beside him when he wrote the [2523—2193] answers.

Q. You are just as positive about that as you are about anything else? A. I am; yes.

Q. Don't you know you are mistaken about that?

A. No, I don't; I know I am positive about it, correct about it.

Q. Sure about it? You couldn't possibly be mistaken? A. Yes, sir.

Q. Dead sure? A. I am.

Q. And you will stake your life on it?

A. Yes, sir.

Q. And if it is not in Mullen's handwriting you are guilty of perjury? You are just that sure of it, are you?

Mr. GORDON.—Oh, I object to that.

Mr. TANNAHILL.—Well, he seems to be wanting to get gay, and I want him to get just as gay as he wants to.

Q. What have you got to say about that?

A. I said before that that was Mullen's handwriting, and that I stood beside him at his desk while he filled in my answers. Of course, you can do like you did in Boise, bring the whole town there, I suppose, to contradict me.

Q. We will impeach you good and plenty; you

(Testimony of Ivan R. Cornell.)

needn't worry about that.

A. I will give you a pointer; you had better not try certain things.

Q. All right; you get just as gay as you want to. We will try and conduct our side of the case. Now then, you testified that this glass in Mr. Kettenbach's private office extended about halfway down [2524—2194] the partition or that about half of the wall was glass. Did I understand you right?

A. I didn't.

Q. What did you testify about that?

A. I said that the walls around his private office were partly glass, the glass extending to within—from the top of the wall, which doesn't extend clear to the ceiling, that the glass extended down to within possibly three and a half feet of the floor.

Q. That glass was colored, was it not?

A. No, not at that time; it was just as clear as these windows.

Q. You could see right through it, could you?

A. I could, yes.

Q. Now then, you testified that Kester and Kettenbach and Dwyer were holding a consultation in this private office of Kettenbach's for something like an hour, I believe. You didn't testify to that in Moscow, or in Boise or before the grand jury, did you?

A. I think I did, yes.

Q. Are you sure you did?

A. I think so, yes.

Q. Isn't it a fact that the only thing you testified to before was that they were in the private office

(Testimony of Ivan R. Cornell.)

and looking over those papers, questions and answers, your final proof papers, and that you never testified before that Dwyer and Kester and Kettenbach was in the private office holding a consultation or a discussion prior to the time you filed?

A. I referred to that; I think that they were in there for an hour when I was standing—

Q. When did you refer to it?

A. In both of the other trials.

Q. Are you sure you did? [2525—2195]

A. I think so.

Q. Now, didn't you hear them—

A. If I had that before me just like you have got I could tell pretty quickly.

Q. I am reading from the notes of your evidence.

A. What is that there?

Q. That is your evidence there, and that don't appear in your evidence.

A. I can't say positively whether I did or not; you have got the advantage of me, having the paper there.

Q. Your recollection seems to be very good. I am asking you what your recollection is now?

A. I said my recollection is that I testified about their being in his private office while I was—

Q. But you are not sure of it, are you?

A. I think I am, yes.

Q. You say you are sure of it? A. Yes, sir.

Q. You are positive of that now, are you?

A. It is my recollection of the matter, yes. That is the best answer I can give.

(Testimony of Ivan R. Cornell.)

Q. Didn't you hear some discussion in there, where Dwyer wanted him to pay your location fee?

A. No, I couldn't tell the substance of the talk.

Q. How close was you to Kettenbach's private office?

A. I was sitting in the extreme front of the bank?

Q. Now, you say that Mr. Dwyer told you, when you went up to the timber, that he and others interested with him owned some of that timber, or a great deal of the timber around there?

A. That is my recollection, that they owned considerable of it, yes. [2526—2196]

Q. You never testified to that before, did you?

A. I think so, yes.

Q. When did you testify to it?

A. At the other trials.

Q. Which one? Both of them?

A. I couldn't say whether both of them or not.

Q. Now, when did you first come to Lewiston?

A. Well, what bearing has that on this case?

Mr. GORDON.—Answer the question, Mr. Cornell.

WITNESS.—Well, I object to a lot of insulting questions like they were asking in Boise last February, unless they have some bearing on the case.

Mr. TANNAHILL.—You refuse to answer the question, do you?

WITNESS.—Well, what is the bearing on this case? I can't see.

Mr. TANNAHILL.—I am asking you the question.

Mr. GORDON.—You have not the privilege to de-

(Testimony of Ivan R. Cornell.)

cline to answer it, Mr. Cornell, questions of that character.

WITNESS.—When was the first time I went to Lewiston?

Mr. TANNAHILL.—Yes.

A. It was in the spring of 1897, I think.

Q. What did you go there for?

A. I went there to work for the O. R. & N. Company.

Q. How long did you work for the O. R. & N.?

A. Why, I think possibly about a month, if I recall now.

Q. How did you come to quit?

A. That's my own business. I won't answer such questions as that.

Q. You refuse to answer the question, do you?

(No answer.)

Q. Do you refuse to answer the question? [2527—2197]

A. (Pause) I do, unless I am obliged to, yes.

Mr. GORDON.—It is proper for you to answer those questions, Mr. Cornell.

WITNESS.—Well, it isn't fair to me though; I can say that much.

Mr. GORDON.—You can explain anything you have to say about the answers that are made.

WITNESS.—What?

Mr. GORDON.—You can explain any answer you make.

WITNESS.—I know, but it isn't fair to me to answer a whole lot of questions like that.

(Testimony of Ivan R. Cornell.)

Mr. GORDON.—But I understand the law to be that the only questions that you need not answer are those that would tend to incriminate you, and there is nothing in that that would tend to incriminate you, and if the Court were called upon he would have to instruct you to answer it.

A. Well, in the first place, there was work for two men; it was more than one man could do, that is, the way things were managed at that time, and they got someone else to take my place.

Mr. TANNAHILL.—Q. You was discharged, was you not?

A. I suppose so, if that is what you want to call it.

Q. What did you do next?

A. I returned to Portland.

Q. How is that?

A. I say I returned to Portland.

Q. What did you do there?

A. Why, I don't remember now just what I was doing.

Q. What work did you do? A. Where? Here?

Q. Yes.

A. I don't recall that I did anything much.

Q. Where did you go? What did you do after you left Portland? [2528—2198]

A. Why, I was here then I guess, about something like two years. Then I went up into Eastern Oregon.

Q. Now, you first went to Lewiston in 1902, is that right?

Mr. GORDON.—1897, the first time.

WITNESS.—1897.

(Testimony of Ivan R. Cornell.)

Mr. TANNAHILL.—Q. Then, when did you go back to Lewiston? A. Why, in the fall of 1902.

Q. What did you do there, then?

A. What do you mean? What kind of work?

Q. Yes. Who did you work for?

A. I don't know—twenty or fifty different people, I guess. I worked at odd jobs; I don't know for how many different people.

Q. Well, you worked in the vicinity of Kendrick awhile, didn't you, soon after you went to Lewiston?

A. No, before that.

Q. That was before that? A. Yes.

Q. Who did you work for there?

A. I think I worked for Louis Arnold, if I remember right; he had a lumber-yard there.

Q. How long did you work there?

A. I don't remember now just how long it was.

Q. How did you come to quit work there?

A. I couldn't make anything at it.

Q. You was discharged there, was you not?

A. I was not, no; I quit of my own accord.

Q. Where did you work next?

A. Why, I think I worked on the section there at Kendrick for awhile. [2529—2199]

Q. How long did you work there?

A. I don't remember now.

Q. Four or five weeks?

A. Possibly something like that, I guess.

Q. And you was discharged there, was you not?

A. I suppose that is what you call it, yes.

Q. Then where did you work?

(Testimony of Ivan R. Cornell.)

A. I went from there to Lewiston, as I said.

Q. You didn't go up on the ridges? A. Oh!

Q. In the vicinity of Kendrick?

A. Yes, I did, too.

Q. Which ridge did you go on?

A. I think it was the American Ridge; I wouldn't be sure.

Q. Who did you work for there?

A. Why, I don't recollect now.

Q. Is it not a fact that it was W. H. Russell that you worked for there? A. No.

Q. Was it a fellow by the name of Sam Bigam?

A. No.

Q. Where did you go after you quit there?

A. I went to Lewiston.

Q. What did you do there?

A. Why, as I said, I worked around at odd jobs.

Q. Did you work for Mrs. Monroe there?

A. Yes.

Q. Charlie Monroe's mother?

A. Yes; a number of times.

Q. How long did you work for her?

A. Oh, I don't know; not very long at any one time. I worked for [2530—2200] her a number of times.

Q. You simply worked at odd jobs around there, did you? A. Yes.

Q. Now, then, about when was it that you first met Mr. Kester in Lewiston, in relation to the time you took up your timber claim, about how long was it before?

(Testimony of Ivan R. Cornell.)

A. You mean on my second stay in Lewiston?

Q. Yes.

A. Why, I met him there on the street one day not long after I reached Lewiston.

Q. He recognized you as you was coming across the street, did he? A. Yes.

Q. Spoke to you? A. Yes.

Q. And you had a little talk about your college days? A. Not college days, no.

Q. What did you talk about?

A. We may have talked about attending the B. S. A. at the same time.

Q. About what?

A. About attending the Bishop Scott Academy at the same time.

Q. You think you may have talked about that?

A. Possibly, yes.

Q. How long was it after that before you borrowed some money from Mr. Kester?

A. Why, I don't know. I got money I think twice, a couple of different times. The first one was in the fall, possibly six weeks after I reached Lewiston; I don't know just how long.

Q. And you got money from him a couple of times, and then you arranged with him for money, asked him to loan you some money again, and he told you that he would, but the bank was closed then, and to come [2531—2201] in the next day, and you had gotten some money some place else and didn't need it, and didn't call for it?

A. No; that wasn't exactly the way of it.

(Testimony of Ivan R. Cornell.)

Q. How was it?

A. He did offer to let me have some that time when I asked him, but I didn't go in to get it, because I found I wouldn't need it.

Q. You never asked Mr. Kester for a loan when he didn't make the loan to you, did you?

A. The second time he—the day before he spoke to me about filing on a timber claim he did let me have the money I asked him for, after some hesitation, but—

Q. He let you have fifty cents at one time, didn't he?

A. The first time, yes.

Q. Now, you don't remember how many times it was that you borrowed money from him, do you?

A. I said a minute ago, that it was a couple of times.

Q. I will ask you if you are acquainted with Ab. Masters, who was chief of police of the city of Lewiston at that time when you was there?

A. No, thank fortune, I am not acquainted with him, but I know who he is, though.

Q. You know who he is, do you?

A. I don't care for such acquaintances.

Q. And you knew him after you had filed on this timber claim, did you?

A. I knew who he was, yes.

Q. And you knew him before you had filed on the timber claim, did you?

A. Yes, I think I knew who he was, yes.

Q. Did you know William Schultz, who was sheriff of Nez Perce [2532—2202] County at the time you filed on this timber claim?

(Testimony of Ivan R. Cornell.)

A. Yes, I knew him by sight, yes.

Q. Isn't it a fact that after you filed on this land that you told Ab. Masters or Ab. Masters told you you wasn't doing anything in Lewiston, you was laying around, and he told you that he would vag you, or words to that effect, run you out of town? A. No.

Q. Nothing of that kind occurred?

A. That wasn't the substance of the talk, no.

Q. What did he tell you?

A. Why, one Sunday morning, a short time after I had got through breakfast, I was standing on Main street, with nothing in particular to do on Sunday, of course, and he came along, walking east on Main street on the other side from where I was, crossed over to where I was standing and stepped up to me and asked me what I was doing, and said it appeared to him that I didn't have any visible means of support; then he remarked that he had been told by some parties on the hill that I had been going around up there begging. I demanded to know who they were, and he wouldn't tell me, and I said it was a lie, that whoever told him that—

Mr. GORDON.—I object to this line of examination, on the ground that it is not proper cross-examination, and incompetent and immaterial, and ask that it be stricken out of the record.

Mr. TANNAHILL.—Q. I will ask you if you did not have the following conversation with Ab. Masters in Lewiston, Nez Perce County, State of Idaho, shortly before you made your final proof on your claim, yourself, Ab. Masters and none other being

(Testimony of Ivan R. Cornell.)

present: That Ab. Masters told you that he would vag you or run you out of town, or words in substance and to that effect, and that you stated to him, "I have filed on a timber claim, and as soon as I sell it I will be all right," or will have money, or words in [2533—2203] substance and to that effect.

A. The subject of timber land was never mentioned. In fact the only time that he ever accosted me in that way was the time I spoke of, that Sunday morning.

Q. Well, did you have any such conversation as that?

A. Well, nothing was said at all about timber lands; it wasn't even mentioned.

Q. Now, did you not, on the same day or the day following, or about that time, in conversation with William Schultz, who was then sheriff of Nez Perce County, Idaho, state to William Schultz, yourself, William Schultz, and none others being present, that "Ab. Masters has vagged me, or threatened to vag me," and did you not ask Mr. William Schultz to go and see Masters and talk to Masters about it for you, and also state to William Schultz, "I have filed on a timber claim, and as soon as I sell it I will have money or will be all right," or words in substance and to that effect?

A. I did not. Why should I go to him?

Q. Did you have any such conversation as that?

A. With Schultz?

Q. Yes.

A. No, I did not; why would I go to him?

(Testimony of Ivan R. Cornell.)

Q. I don't know why you went to him.

A. No, I don't know either; I can't give any reason for it. There were a dozen people in Lewiston that I knew a whole lot better than either of those fellows that I could have gone to.

Q. They were not officers though, were they?

A. I did go to an officer though.

Q. Did you not also state to William Schultz, at about the same time and place, in Lewiston, Nez Perce County, State of Idaho, yourself and William Schultz being present, in substance, "Ab. Masters has vaggged [2534—2204] me and run me out of town. Will you go and see Ab. Masters, the chief of police, and tell him I have filed on a timber claim and as soon as I sell it I will have money or will be all right," or words in substance and to that effect? Did you have any such conversation as that with William Schultz? A. I think I said that I did not.

Q. Did you have any talk with William Schultz at all? A. No.

Q. I will ask you if you did not ask Mr. Kester to get you a job in Lewiston, tell him you was out of work and that you had no money, and asked him to get you something to do?

A. I didn't express it just that way, no.

Q. Well, what was it? How did you express it?

A. I think at the time I spoke of, when I met him the first time in the fall of 1902, that he asked me then what I was doing, and I said that I had just reached Lewiston and wasn't doing anything, and I think he offered then to go and see a man that had a

(Testimony of Ivan R. Cornell.)

contract, three contracts there, if he didn't have some work for me; but it didn't materialize though, and later I think I asked him to get another job I thought I might get through his influence, and asked him to go and see if he couldn't.

Mr. GORDON.—What page have you there, Mr. Tannahill?

Mr. TANNAHILL.—I wasn't reading from the record, Mr. Gordon. I have page 135. But what I am asking about isn't in the record. I was just looking through the record to see whether there was anything I have overlooked, is all.

Q. I will ask you if you know Hiram F. Lewis, who was a witness down at Boise in that trial that was had at Boise?

A. No; thank fortune I don't know him, and I don't want to know him either; I know who the man is, by sight. [2535—2205]

Q. You saw him at Boise? A. Yes, sir.

Q. And he was called into the courtroom for you to identify while you was at Boise? A. Yes, sir.

Q. I will ask you if you had a conversation with him at Boise, in the hall of the Government building, where the court was being held, and if you did not state to Hiram F. Lewis at that time, during the time the trial was going on, yourself and Hiram F. Lewis and none others being present, that these defendants are all sons-of-bitches and should be sent to the penitentiary, or words in substance and to that effect.

Mr. GORDON.—I object to that as not proper cross-examination, and incompetent and immaterial.

(Testimony of Ivan R. Cornell.)

A. I did not say that; no.

Mr. TANNAHILL.—Did you have any such conversation as that with him at all?

A. No, I never talked with the man.

Q. You are not on friendly terms with the defendants, are you?

A. I should say not; no. I guess you wouldn't be either after the insulting questions that were asked.

Q. You haven't been on friendly terms with them for a good while, have you?

A. No; I wouldn't want to be either.

Q. If there was anything you could say that would help them to lose their land you would be willing to say it, wouldn't you? A. I certainly would; yes.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Cornell, would you say anything untrue that would cause them [2536—2206] to lose their land?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

A. No; nothing but the facts.

Mr. GORDON.—That is all, Mr. Cornell.

It is hereby stipulated by and between the parties hereto in open court that it shall not be necessary for the various witnesses to read over or sign their testimony given at the hearing in this case before Special Examiner Warren Truitt, at Spokane, Washington, or before Special Examiner A. M. Wing, at Portland, Oregon.

Thereupon the taking of testimony before Special Examiner A. M. Wing was concluded. [2537—2207]

**Certificate of Special Examiner Wing to Testimony,
etc.**

United States of America,
District of Oregon,—ss.

I HEREBY CERTIFY that pursuant to the commission appointing me Special Examiner in the cases numbered 388, 406 and 407, in the Circuit Court of the United States for the District of Idaho, Northern Division, entitled The United States of America, Complainant, vs. William F. Kettenbach et al., Defendants, I caused the witnesses whose testimony appears on the foregoing typewritten pages, numbered from 2020 to 2207, both inclusive, to appear before me at the hour of ten o'clock A. M., on September 15th, 1910, at Room 309, Postoffice Building, Portland, Oregon, and testify in said causes on the dates shown in the foregoing transcript; that before so testifying, said witnesses, and each and every one thereof, were by me first duly sworn to tell the truth, the whole truth and nothing but the truth; that after being so duly sworn said witnesses and each thereof did then and there testify, in answer to direct and cross interrogatories to them propounded by counsel for the respective parties; that said testimony was taken in shorthand, and thereafter in my presence and under my direction was transcribed into the foregoing typewritten pages, numbered from 2020 to 2207, both inclusive, and that said transcript is a true and accurate copy of said testimony and of all thereof, and of the proceedings had therein.

Dated at Portland, Oregon, September 30th, 1910.

A. M. WING,

Special Examiner. [2538—2208]

[Proceedings Had in Office of Register of State
Board of Land Commissioners, at Boise, Idaho,
October 1, 1910.]

*In the Circuit Court of the United States for the Dis-
trict of Idaho, Northern Division.*

IN EQUITY—No. 388, No. 406, No. 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

Boise, Idaho, October 1, 1910, in the office of the
Register of the State Board of Land Commissioners
of the State of Idaho.

[Stipulation as to Taking of Testimony of N.
Jenness et al., at Boise, Idaho.]

It is hereby stipulated by and between the parties
hereto that the witness N. Jenness and any other
witnesses who may testify at Boise, Ada County,
Idaho, may be sworn by any person authorized to ad-
minister oaths in the State of Idaho, and that the evi-
dence of said witnesses may be taken and transcribed,
and considered and may form a part of the record in
these cases the same as though taken before a Special
Examiner regularly appointed by the Court; and the
appointment of a Special Examiner and the signing
of the evidence by the witnesses is hereby waived by
the respective parties hereto. [2539—2209]

[Testimony of N. Jenness, for Complainant.]

N. JENNESS, a witness called upon behalf of the complainant, being first duly sworn by J. W. Keefe, a notary public in and for the County of Ada, State of Idaho, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Jenness, what is your official position at the present time?

A. Register of the State Board of Land Commissioners.

Q. Of the State of Idaho? A. Yes, sir.

Q. And, as such, you are the custodian of all the records of the land office?

A. Land Department; yes, sir.

Q. Land Department of the State of Idaho?

A. Yes.

Q. I will ask you if you have with you the State land board selections, being numbered Selection 6, Charitable Institutions, filed on or about the 20th of June, 1904, and selection number 6 of the State University, and selection number 9 of the State Normal school, and selection number 6 of the scientific schools, all filed in the United States Land office at Lewiston, Idaho, on the 21st day of April, 1904?

A. Yes.

Q. I will ask you if you also have selection number 6 of Charitable Institutions, filed April 21, 1904, and which was withdrawn by reason of a conflict with homestead entries, and selection number 7 of Charitable Institutions, filed April 22, 1904, which was

(Testimony of N. Jenness.)

also withdrawn by reason of conflict with the Northern Pacific Railway Company property, and also selection number 9 of Charitable Institutions, filed June 7, 1905, and withdrawn later, and in lieu of which the selections that you first identified were filed. A. Yes. [2540—2210]

Mr. GORDON.—We offer in evidence the original selection No. 6, Charitable Institutions, filed in the United States Land Office at Lewiston, Idaho, April 21, 1904, which was subsequently withdrawn, and which reads as follows:

“SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Charitable Inst. GRANT, Act of July 3, 1890,
SECTION ———.

No. 6.

Lewiston Land District.

Filed Apl. 21st, 1904.

Rejected Apl. 21st, 1904,
no appeal taken.

Posted on Plat Book not to be posted.

M.

List No. 6 EXHIBITING THE TRACTS OF
PUBLIC LANDS.

Situated in the District of Lands subject to sale at Lewiston, Idaho, *Idaho*, which have been selected by the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3,

1890, in satisfaction of the grant to said State of Idaho, for Charitable, etc., Institutions.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$				
$\frac{1}{4}$	4	38 N.	5 E.	297.49
SE. $\frac{1}{4}$	8			160
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$	9			160
NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, N. $\frac{1}{2}$, SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$,	12			480
E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$, SE. $\frac{1}{4}$,	13			160
S. $\frac{1}{2}$, SW. $\frac{1}{4}$, S. $\frac{1}{2}$, SE. $\frac{1}{4}$	14			160
[2541—2211]				
Lots 2, 3, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$,	18			314.34
NW. $\frac{1}{4}$	20			160
NE. $\frac{1}{4}$	21			160
NE. $\frac{1}{4}$	22			160
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,	23			160
NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	24			400
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	25			400
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,	28			160
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,	32			230
NW. $\frac{1}{4}$, NE. $\frac{1}{4}$, NW. $\frac{1}{4}$,	33			200

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
W. $\frac{1}{2}$ SW. $\frac{1}{4}$,	34			80
SE. $\frac{1}{4}$,	7	39 N.	5 E.	160
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,	17			160
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE.				
$\frac{1}{4}$,	20			160
			[In pencil:]	
NW. $\frac{1}{4}$ SW. $\frac{1}{4}$,	28	Helkenberg		40
NE. $\frac{1}{4}$	29	do		160
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,	33			40
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$, NW.				
$\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$				
SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$,				
S. $\frac{1}{2}$ SE. $\frac{1}{4}$,	17	40 N.	5 E.	360
E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE.				
$\frac{1}{4}$,	18			120
E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	20			80
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$,	21			40
W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW.				
$\frac{1}{4}$,	22			120
SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW.				
$\frac{1}{4}$,	25			120
SE. $\frac{1}{4}$ NE. $\frac{1}{4}$,	26			40
N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$				
NW. $\frac{1}{4}$,	27			120
				<hr/>
				4571.83
[2542—2212]				
				4571.83
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$				
SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$,	28	40 N.	5 E.	160
N. $\frac{1}{2}$ NW. $\frac{1}{4}$,	29			80

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE.				
$\frac{1}{4}$,	28	40 N.	6 E.	160
Lots 3, 4, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$,	7	39 N.	6 E.	119.02
Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,				
SE. $\frac{1}{4}$,	7	38 N.	6 E.	316.30
N. $\frac{1}{2}$ SE. $\frac{1}{4}$,	8			80
N. $\frac{1}{2}$ SW. $\frac{1}{4}$,	9			80
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE.				
$\frac{1}{4}$,	10			120
SE. $\frac{1}{4}$ SW. $\frac{1}{4}$,	13			40
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,				
S. $\frac{1}{2}$,	15			480
E. $\frac{1}{2}$,	18			320
SE. $\frac{1}{4}$,	19			160
SW. $\frac{1}{4}$,	20			160
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,	21			240
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW.				
$\frac{1}{4}$ NW. $\frac{1}{4}$,	24			280
N. $\frac{1}{2}$,	29			320
E. $\frac{1}{2}$,	30			320
NE. $\frac{1}{4}$,	31			160
Lots 6, 7, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	6	39 N.	6 E.	157.61
				<hr/> 8324.76
Lots 1, 2, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,	30	39 N.	5 E.	158.86
				<hr/> 8483.62

List No.

SELECTIONS

Lewiston Land District,

471 Acres 83

Received and Filed ———, 190——.

Approved ———, 190——.

Rejected on account of conflict with settlers.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, April 21, 1904.

The annexed papers were filed by the State of Idaho, through Norman Jackson, State Land Selector, on this 21st day of April, 1904, and are rejected for conflict with the following homestead entries, viz.:

Township 38 N., R. 5 E., B. M.

Mike D. Glover, Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 4, T. 38 N., R. 5 E. B.

Charles W Hanson, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 4, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 9.

Grace D. Wilson, SE. $\frac{1}{4}$, Sec. 8.

C. Wilson, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 9.

Carl W. Rogers, NE. $\frac{1}{4}$, Sec. 12.

Hans Bugge, NW. $\frac{1}{4}$, Sec. 12.

L. Grace Rogers, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 12.

Anton Wohlen, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 13.

William H. Kinkaid, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 14, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 23.

Clarence M. Hooper, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 14, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23. [2544—2214]

Charles O'Brien, Lot 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 18.

Morgan O'Brien, Lot 3, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$,
Sec. 18.

William B. Walker, NW. $\frac{1}{4}$, Sec. 20.

Winifred M. Lane, NE. $\frac{1}{4}$, Sec. 21.

Anna Clyde, NE. $\frac{1}{4}$, Sec. 22.

George W. Miller, NE. $\frac{1}{4}$, Sec. 24.

Janson C. Hammond, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 24, N. $\frac{1}{2}$
SW. $\frac{1}{4}$, Sec. 24.

Charles C. Rigler, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 24, N. $\frac{1}{2}$ NW.
 $\frac{1}{4}$, Sec. 25.

Frank L. Moore, NE. $\frac{1}{4}$, Sec. 25.

John A. Keener, SE. $\frac{1}{4}$, Sec. 25.

Hugh Dowling, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28.

Charles E. Berry, E. $\frac{1}{2}$, NE. $\frac{1}{4}$, Sec. 32, W. $\frac{1}{2}$, NW.
 $\frac{1}{4}$, Sec. 33.

John M. Beames, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec.
32.

Sylvester G. Curtis, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Sec. 33.

Grover C. Kays, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 34.

T. 39 N., R. 5 E., B. M.

Charles C. Vogelmann, SE. $\frac{1}{4}$, Sec. 7.

Lenard Hirzel, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$
NW. $\frac{1}{4}$, Sec. 17.

Carl Johnson, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20.

F. Comstock, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 28.

Susan C. Comstock, NE. $\frac{1}{4}$, Sec. 29.

C. Butler, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 33.

T. 40 N., R. 5 E., B. M.

Roso Catroneo, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 17.

Gene Cotroneo, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$,
Sec. 17, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 18.

Peter Rosalia, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 17, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, 18.

Joseph M. Allphin, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 20, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 29.

Albert T. Schnell, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 21, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 22.

Charles W. Kays, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 25, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 26.

[2545—2215]

Thomas J. Root, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 27, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 28.

William Quinlan, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28.

T. 39 N., R. 5 E., B. M.

Clarence W. Robnett, } Lots 1, 2, and E. $\frac{1}{2}$ NW. $\frac{1}{4}$,
Mary J. Harris, } Sec. 30.

State rejection, p. 2.

T. 40 N., R. 6 E., B. M.

Harley Cardwell, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28.

T. 38 N., R. 6 E., B. M.

Thomas G. Maloney, Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 7.

Joseph W. Lane, SE. $\frac{1}{4}$, Sec. 7.

Thomas B. Reed, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 8.

Geo. G. James, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 8.

Simon P. Fitzgerald, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 10.

William F. Baillie, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 13. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 24.

Walter Williams, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 15.

Albert J. Flood, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15.

William R. Lawrence, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 15.

Charles E. Colwell, NE. $\frac{1}{4}$, Sec. 18.

Roscoe M. Sanders, SE. $\frac{1}{4}$, Sec. 18.

John McHardie, SE. $\frac{1}{4}$, Sec. 19.

Frank A. McConnell, SW. $\frac{1}{4}$, Sec. 20.

Jacob J. Eikum, NE. $\frac{1}{4}$, Sec. 21.

William J. Brown, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 21.

John H. Baillie, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 24.

Chas. F. Shumaker, NE. $\frac{1}{4}$, 29.

Chas. B. Thornburg, NW. $\frac{1}{4}$, Sec. 29.

Fred H. McConnell, NE. $\frac{1}{4}$, Sec. 30. [2546—2216]

Albert Anderson, SE. $\frac{1}{4}$, Sec. 30.

John C. Baker, NE. $\frac{1}{4}$, Sec. 31.

T. 39 N., R. 6 E., B. M.

Harvey J. Steffey, Lots 3, 4, and NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec.
7.

Ramsey M. Walker, Lots 6, 7, and E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec.
6.

Lewiston, Idaho, April 21, 1904.

I hereby acknowledge due service of notice of the
decision in this case and of my right of appeal within
30 days.

(Signed) NORMAN JACKSON,
State Land Selector."

Mr. TANNAHILL.—The defendants severally
waive any further identification of the documents,
but object to the admission of the grant or list in evi-
dence, upon the ground that it is incompetent, irrele-
vant and immaterial.

Mr. GORDON.—We also offer in evidence special
grant selection list Charitable Institutions, No. 7,

filed in the United States Land Office at Lewiston, Idaho, April 22, 1904, which was afterwards withdrawn, which reads as follows:

“SPECIAL GRANT SELECTION LIST.
IDAHO STATE LAND DEPARTMENT.
Charitable Inst. Grant, Act of July 3, 1890,
SELECTION 11.

No.

LEWISTON LAND DISTRICT.

Filed Apl. 22, 1904.

{ Rejected Apl. 22, 1904,
no appeal taken. }

Posted on Plat Book not to be posted. [2547—2217]

LIST NO. 7 EXHIBITING THE TRACTS OF
PUBLIC LANDS

Situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the ——— Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Charitable, etc., Institutions.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.				
S. $\frac{1}{2}$ SE. $\frac{1}{4}$,	19	40 N.	5 E.	80
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE.				
$\frac{1}{4}$,	22			80
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW.				
$\frac{1}{4}$,	23			120
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.				
$\frac{1}{4}$,	26			160

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE.				
$\frac{1}{4}$,	27			120
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	29			40
Lot 4, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE.				
$\frac{1}{4}$ SW. $\frac{1}{4}$,	30			121.99
Lots 1, 2, 3, 4, NE. $\frac{1}{4}$ NW.				
$\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$				
SE. $\frac{1}{4}$,	31			330
S. $\frac{1}{2}$,	33			320
NW. $\frac{1}{4}$,	34			160
All,	2	39 N.	6 E.	648.16
All,	3			650.80
Lots 1, 2, 3, 4, S. $\frac{1}{2}$ NE. $\frac{1}{4}$,				
S. $\frac{1}{2}$ NW. $\frac{1}{4}$,	4			331.44
S. $\frac{1}{2}$,	8			320
S. $\frac{1}{2}$,	9			320
All,	11			640
All,	14			640
E. $\frac{1}{2}$,	15			320
Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	19			158.89
NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE.				
$\frac{1}{4}$ SE. $\frac{1}{4}$,	20			280
				<hr/>
				5841.28

[2548—2218]

S. $\frac{1}{2}$ SE. $\frac{1}{4}$,	19	40 N.	5 E.	80
NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE.				
$\frac{1}{4}$,	22			80
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW.				
$\frac{1}{4}$,	23			120
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.				
$\frac{1}{4}$,	26			160

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE.				
$\frac{1}{4}$,	27			120
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	29			40
Lot 4, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE.				
$\frac{1}{4}$ SW. $\frac{1}{4}$,	30			121.99
Lots 1, 2, 3, 4, NE. $\frac{1}{4}$ NW.				
$\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$				
SE. $\frac{1}{4}$,	31			330
S. $\frac{1}{2}$,	33			320
NW. $\frac{1}{4}$,	34			160
All,	2,	39 N.	6 E.	648.16
All,	3			650.80
Lots 1, 2, 3, 4, S. $\frac{1}{2}$ NE. $\frac{1}{4}$,				
S. $\frac{1}{2}$ NW. $\frac{1}{4}$,	4			331.44
S. $\frac{1}{2}$,	8			320
S. $\frac{1}{2}$,	9			320
All,	11			640
All,	14			640
E. $\frac{1}{2}$,	15			320
Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	19			158.89
NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE.				
$\frac{1}{4}$ SE. $\frac{1}{4}$,	20			280
N. $\frac{1}{2}$,	22			320
NE. $\frac{1}{4}$,	27			160
N. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ SW.				
$\frac{1}{4}$,	28			160
S. $\frac{1}{2}$,	29			320
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE.				
$\frac{1}{4}$, SE. $\frac{1}{4}$,	31			280
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.				

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
1/4, SW. 1/4 NW. 1/4, S.				
1/2,	32			480
				<hr/>
				7561.28
(In pencil:) Take from this 1525.99 acres.				
				7561.28
				1720
				<hr/>
				5841.28''

[2549—2219]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the special grant selection list offered in evidence, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We also offer in evidence special grant selection list No. 9, Charitable Institutions, filed in the United States Land Office at Lewiston, Idaho, June 7, 1905, which was subsequently withdrawn, and which reads as follows:

(In pencil:) “9/5/05

No action yet taken by Atty. Genls. office.

M.

(Written in Ink and Printed:)

SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Charitable Inst. Grant, Act of July 3, 1890,

SECTION 11.

NO. 9

{ (In pencil:) use this number for
next List

Lewiston Land District.

Filed June 7, 1905.

{ Rejected June 7, 1905, }
 { no appeal taken. }

Posted on Adjustment Sheets not to be posted.

M.

Posted on Plat Book not to be posted.

M.

IDAHO STATE LAND DEPARTMENT.

Selection List No. 9, exhibiting the Tracts of Public Lands situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, in satisfaction of the [2550—2220] grant to said State of Idaho, for Charitable Institutions.

Subdivisions.	Sec.	Twp.	Rge.	Area Acres 100ths.
SW. of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, lots				
2 and 3	5	38 N.	7 E.	295.48
All of	6	"	"	667.61
Lots 1, 2, and 3	7	"	"	117.43
NW. of NE. $\frac{1}{4}$, E $\frac{1}{2}$ NW				
$\frac{1}{4}$, SW. of NW. $\frac{1}{4}$,	8	"	"	160
				1240.52

Office of the State Board of Land

Commissioners of the State of Idaho.

To the Register and Receiver U. S. Land Office
 Lewiston, Idaho:

I, Charles J. Munson, Selecting Agent of the State
 Board of Land Commissioners of the State of

Idaho, acting for and by the authority of the State Board of Land Commissioners for the State of Idaho, do hereby certify that on the 7th day of June, 1905, I did select from the unsurveyed, unappropriated, unreserved and nonmineral public lands, within the district of lands subject to sale at Lewiston, Idaho, the several tracts described in this list, as part of the grant to the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, for Charitable Institutions.

Now, therefore, I hereby offer for filing said list, together with my affidavit of the nonmineral character of the lands described in said list. The filing fee, amounting to \$———, accompanies the said list.

Given under my hand this 7th day of June, 1905.

CHARLES J. MUNSON,

Selecting Agent of the State Board of Land Commissioners of the State of Idaho. [2551—2221]

United States Land Office, Lewiston, Idaho.

June 7th, 1905.

We hereby certify that we have carefully examined the foregoing list of lands selected by the State of Idaho, under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State for Charitable Institutions, that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved this 7th day of June, 1905; that the whole of said lands are surveyed public lands of the United

States, no part thereof being returned as mineral lands, nor is there any homestead, pre-emption or other valid claim to any portion of said lands on file or record in this office. We further certify that the said list shows an assessment of fees payable to us to the amount of \$——, which amount has been paid to the undersigned, the Receiver, by the said State of Idaho, in full payment and discharge of said fees.

_____, Register.

_____, Receiver.

STATE OF IDAHO.

SPECIAL GRANTS

List No. 9.

—— SELECTIONS

Lewiston Land District,
1240.52 Acres.

Received and filed. June 7, 1905.

Rejected. [2552—2222]

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, June 15, 1905.

(Pencil:) #9

charitable

Lewiston

Mr. C. S. McConnell,

Register of the State Land Board,

Boise, Idaho.

Sir:

Find enclosed herewith copies in duplicate of Lists No. 7, and 8, made by Charles J. Munson for

benefit of charitable institutions, which was accepted by this office on June 13, 1905.

Find enclosed also List No. 9, which was rejected for conflict with prior applications as shown by rejection slip attached to said list. Service of said rejection was accepted by Mr. Munson on June 7, 1905, consequently the state will have thirty days from that date in which to appeal from said rejection.

Very respectfully,

(Signed) J. B. WEST,

Register.

Lewiston, Idaho, June 7, 1905.

State Selection List No. 9, for the benefit of Charitable Institutions herewith attached, is rejected as follows, viz.:

SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Lots 2, 3, Sec. 5, with H. E. No. 11359.

SE. $\frac{1}{4}$, Sec 5, with H. E. No. 11358.

All Sec. 6, with Selection of Geo. I. Scofield.

Lots 1, 2, 3, Sec. 7, with N. P. List No. 30.

NW $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 8, with H. E. No 11368.

I herewith acknowledge due service of notice of the decision in this case and of my right of appeal within thirty days.

(Signed) CHARLES J. MUNSON,

State Selector. [2553--2223]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the admission of the same in evidence, upon the ground that they are incompetent,

irrelevant and immaterial.

Mr. GORDON.—We offer in evidence special grant selections No. 6, Charitable Institutions, filed in the United States Land Office at Lewiston, Idaho, June 20, 1904, which reads as follows:

“SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Charitable Inst. Grant, Act of July 3, 1890,
SECTION 11.

No. 6.

LEWISTON LAND DISTRICT.

Filed June 20, 1904.

Fees Paid ——— 190——. Amount \$124.00.

Posted on Plat Book Dec. 9—05. By E. L. M.

List No. 6 Exhibiting the Tracts of Public Lands, Situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Charitable and Penal Institutions.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
Lots 2, 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	3	39 N.	4 E.	346.51
Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Lots 3, 6, 7, 10, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$,	4	“	“	494.50
SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	5	“	“	353.95
Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$,	6	“	“	315.03

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Lot 5, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$,	8	39 N.	4 E.	355.25
[2554—2224]				
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lot 1, SW. $\frac{1}{4}$	9	"	"	474.40
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$,	10	"	"	200
S. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$,	12	"	"	240
NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	13	"	"	560
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$,	14	"	"	120
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	15	"	"	480
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lots 1, 3, SW. $\frac{1}{4}$,	17	"	"	508.80
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Lots 1, 3, E. $\frac{1}{4}$ NW. $\frac{1}{4}$ E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 4, 5,	19	"	"	548.25
NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,	20	"	"	120
NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$	21	"	"	120
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,	23	"	"	280
N. $\frac{1}{2}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW.				

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
$\frac{1}{4}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$, NW. $\frac{1}{4}$	24	39 N.	4 E.	440
All	25	"	"	560
S. $\frac{1}{2}$ SE. $\frac{1}{4}$	26	"	"	640
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Lot 5, Lots 7, 10, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 8, 9	27	"	"	80
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 9, 10	30	"	"	374.76
S. $\frac{1}{2}$	31	"	"	439.30
S. $\frac{1}{2}$	32	"	"	320
E. $\frac{1}{2}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	33	"	"	320
All	34	"	"	520
	35	"	"	640
				<hr/>
				9850.75
				9850.75
				116.42

[2555—2225]

Office of State Board of Land Commissioners
of the State of Idaho.

To the Register and Receiver U. S. Land Office,
Lewiston, Idaho:

I, Norman Jackson, Selecting Agent of the State Board of Land Commissioners of the State of Idaho, acting for and by authority of the State Board of Land Commissioners for the State of Idaho, do hereby certify that on the 20th day of June, 1904, I

did select from the surveyed, unappropriated, unreserved and nonmineral public lands, within the district of lands subject to sale at Lewiston, Idaho, the several tracts described in this list, as part of the grant of the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, for Charitable and Penal Institutions; amount of original grant 150,000 acres; heretofore selected, 133,758.02 acres; amount unselected, 16,241.98 acres; this selection 9850.75 acres; still to be selected 6391.18.

Now, therefore, I hereby offer for filing said list, together with my affidavit of the nonmineral character of the lands described in said list. The filing fee, amounting to \$124, accompanies the said list.

Given under my hand this 20th day of June, 1904.

NORMAN JACKSON,

Selecting Agent of the State Board of Land Commissioners of the State of Idaho.

List No. 6.

Charitable Institutions.

Lewiston Land District.

9850.75 Acres.

Received and Filed June 20, 1904.

Ent. [2556—2226]

4-485.

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, Feb. 2, 1906.

State Land Board, Cha #
Boise, Idaho. 6

Law.

SIR:

In reference to appl. of Charles Mix for lands in Sec. 20, Tp. 39 N. R. 4 E. in conflict, you are advised that under date of Dec. 26, 1905, the Hon. Commissioner of the General Land Office closed the case against Mix leaving his appl. rejected.

Very Respectfully,

.”

DEPARTMENT OF THE INTERIOR.

General Land Office,

“40095-1905.

(G)

M. V. B.

Washington, D. C., June 6, 1905.

Address only the
Commissioner of the General Land Office.

Cha #6

Register and Receiver,
Lewiston, Idaho.

Lewiston.

Sirs:

February 3, 1904, the state filed a relinquishment covering 13,020.24 acres of selections made by List

No. 5 of such selections under the grant for Charitable, Educational, etc., purposes Act of July 3, 1890 (26 Stat. 215), which relinquishment was disallowed by this office September 13, 1904. [2557—2227]

December 5, 1904, List No. 6, of selections under this grant was held for cancellation as to 1,311.41 acres as being in excess of the grant.

December 8, 1904, the State appealed from the action of this office of September 13, 1904, refusing to allow the relinquishment, and upon the further showing of the State the case was returned to this office for reconsideration. February 24, 1905, your office reported that no action had been taken by the State as to letter 'G' of December 5, 1904.

April 12, 1905, this office allowed the relinquishment of 12,980.24 acres of selected lands embraced in List No. 5.

This action reduced the pending balance of selections under said grant, and the action of letter 'G,' of December 5, 1904, holding List No. 6 to be in excess of the grant is hereby revoked.

So advise the proper officer of the State.

Very respectfully,

Acting Commissioner.

(Endorsed:) List 6. Charitable."

Moscow, Idaho, July 9, 1904.

Cha # 6

Hon. John T. Morrison,
Boise, Idaho.

Lew.

My dear Governor:—

I have the honor to bring to your attention some facts connected with the selection, by the State, of land in Township 39 N., R. 4 E., B. M. [2558—2228]

Up to the time this selection was made it was generally understood here that the work of William Dwyer had proven to be so unsatisfactory that he had been dismissed and was no longer in the employ of the State. However, Dwyer, together with Melvin C. Scott, examined, or pretended to examine, the land in this township and Scott made the nonmineral affidavit on behalf of the State. The next morning *Dwyre* made scrip filings on a number of valuable forty acre and eighty acre tracts which were surrounded by these State selections in such a manner that it was impossible for a settler to get a filing on a quarter section without conflict with the State.

Before *Dwyre* and Scott went to the timber to look at the land *Dwyre* placed a man at the land office door to hold a place for him in the line which was afterwards formed, so as to get ahead of settlers with his scrip filings.

It was given out and generally understood here that the State would make no selections in this township

and this information is said to have come from Mr. Goldsmith, the State Selector. However this may be, some of our friends here, relying upon the statement that the State would make no claim, went into the township in absolute good faith and, at considerable trouble and expense to themselves, looked the land over thoroughly with a view to making application to purchase it under the timber and stone laws.

Very shortly before the expiration of the State's prior right *Dwyre* and Scott started out to examine this township and, returning to Lewiston, Scott selected for the State over nine thousand acres and *Dwyre* filed scrip as before indicated.

This selection was made on the last day of the State's preference right and those who went into the township after having been led to believe no State selection would be made feel that an injustice has been done them. [2559—2229]

It is impossible for two men to examine each legal subdivision of nine thousand acres of such land as this is in the time *Dwyre* and Scott were in the township. Besides part of the land selected lies on one side and part on the other of the North Fork of Clearwater river, and, at that time, it was impossible to cross excepting at one point, and the boatman at that point stands ready to swear they did not cross there; also many people who were in that country at the time are certain they made no examination on the west side of the township where part of these selections were made.

The people who had spent their time and money

in examining the land with a view to its purchase appeared at the land office to file their applications for it, and, when they found it selected by the State, filed protests against patent *issuing* to the State by virtue of the selection. Another protest was filed against the selection as an entirety.

Many of us here are of the opinion that the action of Scott and *Dwyre* was unauthorized, either by the State Board of Land Commissioners or by yourself, and I have therefore taken the liberty to lay the matter before you at considerable length.

The names of the citizens who have been injured by this selection and the description of the land claimed by them are as follows:

Alie C. Slee, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Section 35.

Kate M. Hanley, N $\frac{1}{2}$ SE. $\frac{1}{4}$, SW $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 34.

Phillip L. Eberhardt, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 34, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec 35.

Franklin Nelson, W. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 26, All in Twp. 39 N., R. 4 E., B. M.

In addition to this there were two other parties whose names I do not know who intended to file on SW. $\frac{1}{4}$ Sec. 26 and W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ Sec. 23, but they are too poor to go into litigation and did not offer filings. [2560—2230]

I have the honor to request that the State relinquish its claim to these six tracts of land, above described, and can truly say that such action would not only be just, but would meet with popular approval wherever the facts are known. Should the State relinquish its claim to these six tracts the general pro-

test which was filed will, of course, be withdrawn.

Trusting you will give this matter careful consideration I am,

Yours very respectfully,

ELMER DESVOIGNE."

“DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE.

Charitable

#8.

Lewiston, Idaho, June 20, 1904.

Melvorn C. Scott, being duly sworn according to law, deposes and says that he is the identical ——— who has been appointed by the State Board of Land Comm'rs of Idaho to apply for Government title to the

	Sec.	Town.	Range.	Area.
Lots 2, 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	3	39N.	4E.	346.51
Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Lots 3, 6, 7, 10, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$,	4	“	“	494.50
SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	5	“	“	353.95
Lots 1 & 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$,	6	“	“	315.03
NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Lot 5, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$,	8	“	“	355.25
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lot 1, SW. $\frac{1}{4}$,	9	“	“	474.40

	Sec.	Town.	Range.	Area.
NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NW.				
$\frac{1}{4}$, W. $\frac{1}{4}$ SW. $\frac{1}{4}$,	10	39N.	4E.	200.
S. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$,	12	"	"	240.
NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.				
$\frac{1}{4}$, SW. $\frac{1}{4}$,	13	"	"	560.
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW.				
$\frac{1}{4}$,	14	"	"	120.
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$				
NW. $\frac{1}{4}$, SW. $\frac{1}{4}$,	15	"	"	480.
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$				
NW. $\frac{1}{4}$, Lots 1, 3, SW.				
$\frac{1}{4}$,	17	"	"	508.80
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$				
SE. $\frac{1}{4}$, Lots 1, 3, E. $\frac{1}{2}$				
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,				
Lots 4, 5,	19	"	"	548.25
[2561—2231]				
NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW.				
$\frac{1}{4}$,	20	"	"	120.
NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.				
$\frac{1}{4}$,	21	"	"	120
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$				
NW. $\frac{1}{4}$,	23	"	"	280
N. $\frac{1}{2}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$				
SW. $\frac{1}{4}$,	24	"	"	440
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$, NW.				
$\frac{1}{4}$,	25	"	"	560
All	26	"	"	640
S. $\frac{1}{2}$ SE. $\frac{1}{4}$,	27	"	"	80
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Lots 5, 7, 10,				

	Sec.	Town.	Range.	Area.
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 8, 9,	30	39N.	4E.	374.76
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,				
E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 3, 4,				
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 9, 10,	31	"	"	439.30
S. $\frac{1}{2}$,	32	"	"	320
S. $\frac{1}{2}$,	33	"	"	320
E. $\frac{1}{2}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SW.				
$\frac{1}{4}$,	34	"	"	520
All	35	"	"	640

9850.75

That he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is [2562—2232]

not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Lewiston, Idaho.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by _____), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in _____, within the Lewiston, Idaho, land district, on this _____ day of _____, 190____.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the same upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—We also offer in evidence special grant selection list No. 7, Charitable Institutions, filed May 23, 1905, and accepted June 13, 1905, which reads as follows:

SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Charitable Inst. Grant, Act of July 3, 1890, Section
11.

No. 7.

Lewiston Land District.

Filed May 23, 1905. Accepted June 13, 1905.

Posted on Adjustment Sheets 12-12-06. By E. L. M.

Posted on Plat Book Dec. 9-05. By E. L. M.
[2563—2233]

IDAHO STATE LAND DEPARTMENT.

Selection List No. ~~44~~ 7 exhibiting the Tracts of Public Lands situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the ——— Section of an Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Charitable Institutions.

Subdivisions.	Sec.	Twp.	Rge.	Area Acres 100ths.
NE. SE.	17	30 N.	1 W.	40
NW. SE.	17	30 N.	1 W.	40
SE. SE.	17	30 N.	1 W.	40
SW. SE.	17	30 N.	1 W.	40
NE. SW.	17	30 N.	1 W.	40
NW. SW.	17	30 N.	1 W.	40
SE. SW.	17	30 N.	1 W.	40
NE. NE.	19	30 N.	1 W.	40
NW. NE.	19	30 N.	1 W.	40
SW. NE.	19	30 N.	1 W.	40
SE. NE.	19	30 N.	1 W.	40
NE. NW.	19	30 N.	1 W.	40
SE. NW.	19	30 N.	1 W.	40
NE. SE.	19	30 N.	1 W.	40
Lot 1	30	30 N.	1 W.	39.72
Lot 2	30	30 N.	1 W.	39.77

639.49

[2564—2234]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the same upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—We also offer in evidence special grant selection list No. 8, Charitable Institutions, filed June 7th, 1905, which reads as follows:

· SPECIAL GRANT SELECTION LIST.
IDAHO STATE LAND DEPARTMENT.
Charitable Inst. Grant, Act of July 3, 1890, SEC-
TION ———.

No. 8.

Lewiston Land District.

Filed June 7th, 1905. Accepted June 13, 1905.

Fees Paid June 7, 1905. Amount \$14.00.

Posted on Adjustment Sheets 12/12/06. By E. L. M.

Posted on Plat Book Dec. 9-05. By E. L. M.

IDAHO STATE LAND DEPARTMENT.

Selection List No. 8 exhibiting the Tracts of Public Lands situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Charitable Institutions. [2565—2235]

Subdivisions.	Sec.	Twp.	Rge.	Area Acres 100ths.
Lot 4, and SE. of SE. $\frac{1}{4}$,		5	38N. 7E.	87.59
NW. of NE. $\frac{1}{4}$, SE. of NE. $\frac{1}{4}$, NE. of NW. $\frac{1}{4}$, NE. of SE. $\frac{1}{4}$,		7	“ “	160
NE. of NE. $\frac{1}{4}$, NW. of SW. $\frac{1}{4}$,		8	“ “	80
SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$,		9	“ “	240
E. $\frac{1}{2}$ of NW. $\frac{1}{4}$,		18	“ “	80
S. $\frac{1}{2}$ of SE. $\frac{1}{4}$,		34	“ “	80
SW. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, NE. of SE. $\frac{1}{4}$,		35	“ “	280
				<hr/> 1007.59

[2566—2236]

Office of the State Board of Land

Commissioners of the State of Idaho.

To the Register and Receiver U. S. Land Office,
Lewiston, Idaho:

I. Charles J. Munson, Selecting Agent of the State Board of Land Commissioners of the State of Idaho, acting for and by the authority of the State Board of Land Commissioners for the State of Idaho, do hereby certify that on the 7th day of June, 1905, I did select from the surveyed, unappropriated, unreserved and nonmineral public lands, within the district of lands subject to sale at Lewiston, Idaho, the several tracts described in this list, as part of the grant to the State of Idaho under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, for Charitable Institutions.

Now, therefore, I hereby offer for filing said list, together with my affidavit of the nonmineral character of the lands described in said list. The filing fee, amounting to \$14.00, accompanies the said list.

Given under my hand this 7th day of June, 1905.

CHARLES J. MUNSON,
Selecting Agent of the State Board of Land Commissioners of the State of Idaho.

United States Land Office, Lewiston, Idaho,

June 13th, 1905.

We hereby certify that we have carefully examined the foregoing list of lands selected by the State of Idaho, under the provisions of the 11th Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State for Charitable Institutions, that we have tested the accuracy of said list by the plats and records of this office, and that we find the same to be correct; and we further certify that the filing of said list is [2567—2237] allowed and approved this 13th day of June, 1905; that the whole of said lands are surveyed public lands of the United States, no part thereof being returned as mineral lands, nor is there any homestead, pre-emption, or other valid claim to any portion of said lands on file or record in this office. We further certify that the said list shows an assessment of fees payable to us to the amount of \$14.00, which amount has been paid to the undersigned, the Receiver, by the

said State of Idaho in full payment and discharge of said fees.

J. B. WEST,
Register.

CHARLES H. GARBY,
Receiver.

STATE OF IDAHO

SPECIAL GRANTS.

List No. 8.

STATE SELECTIONS,
LEWISTON LAND DISTRICT.

1007.59 Acres.

Received and filed June 13, 1905.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the same upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—We also offer in evidence special grant selection list No. 6, State University grant, filed April 21, 1904, in the United States Land Office at Lewiston, Idaho, which reads as follows: [2568—2238]

SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

UNIVERSITY GRANT, ACT OF JULY 3, 1890,
SECTION ———.

No. 6.

Lewiston Land District.

Filed Apl. 21st, 1904.

Posted on Plat Book Dec. 6-05. By E. L. M.

List No. 6, Exhibiting the Tracts of Public Lands

Situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the _____ Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for State University.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
All	1	40	5E.	673.40
All	2	"	"	675.20
All	3	"	"	676.68
All	4	"	"	677.68
S. $\frac{1}{2}$,	8	"	"	320
S. $\frac{1}{2}$,	9	"	"	320
E. $\frac{1}{2}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	11	"	"	400
All	12	"	"	640
All	13	"	"	640
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$	17	"	"	280
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$,	18	"	"	200
NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$,	19	"	"	240
N. $\frac{1}{2}$, W. $\frac{1}{2}$, SW. $\frac{1}{4}$,	20	"	"	400
N. $\frac{1}{2}$, SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$,	21	"	"	600
N. $\frac{1}{2}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$,	22	"	"	400
[2569—2239]				
N. $\frac{1}{2}$, SE. $\frac{1}{4}$,	23	"	"	480
All	24	"	"	640
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$				

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
SE. $\frac{1}{4}$,	25	40N.	5E.	280
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,	26	"	"	40
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,	26	"	"	40
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	27	"	"	40
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE.				
$\frac{1}{4}$, NW. $\frac{1}{4}$,	28	"	"	280
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,	29	"	"	40
All	11	40	6E	640
S. $\frac{1}{2}$,	12	"	"	320
All	19	"	"	630.64
S. $\frac{1}{2}$,	20	"	"	320
N. $\frac{1}{2}$, SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$,	23	"	"	560
E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$,				
SE. $\frac{1}{4}$,	24	"	"	240
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$				
SE. $\frac{1}{4}$,	28	"	"	320
				<hr/>
				11,973.60

List No. 6.

State University Selections.

Lewiston Land District.

11973 Acres 60/100.

Received and Filed April 21, 1904.

Ent. [2570—2240]

Copy.

“G”

132751-1905.

M. V. B. DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

WASHINGTON, D. C., September 9, 1905.

Address only the

Commissioner of the General Land Office.

Register and Receiver,

Lewiston, Idaho.

Sirs:

By letter “G” June 6, 1905, this office instructed you to advise the State that the selections made by the state, under the grant for the University of Moscow by list No. 6, exceeded the grant by 3345 acres, and the State was called upon the relinquish selections embraced in said list to approximate as nearly as possible the amount allowed by the grant.

August 15, 1905, you transmitted the relinquishment by the State of selections in said list 6 embracing 3353.40 acres, which is hereby accepted and the selections canceled as follows:

All of Sec. 1; All of Sec. 12; All of Sec. 13; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ Sec. 17; W. $\frac{1}{2}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$ Sec. 18; NE. $\frac{1}{4}$, and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ Sec. 19; W. $\frac{1}{2}$ of NE. $\frac{1}{4}$ Sec. 20; W. $\frac{1}{2}$ Sec. 21; S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ Sec. 24; N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$, E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ Sec. 25, Tp. 40 N., R. 5 E.

Advise the proper officer of the State of this action.

Very respectfully,

Signed—J. H. FIMPLE,

Acting Commissioner.

CD. [2571—2241]

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, September 21, 1905.

Hon. J. J. Guheen,

Attorney General for State of Idaho,

Boise, Idaho.

Sir:

Find enclosed herewith copy of decision of the Hon. Commissioner of the General Land Office under date of September 9, 1905, wherein the relinquishment of the State for certain lands taken in excess of the grant due the State for State University List No. 6, amounting to 3353.40 acres, is accepted.

Very respectfully,

J. M. MOLLOY,

Chief Clerk. [2572—2242]

(Copy)

Boise, Idaho, July 3, 1905.

Register and Receiver,

United States Land Office,

Lewiston, Idaho.

Gentlemen:—

The State of Idaho hereby waives, releases and relinquishes unto the United States of America, all right, title and interest in and to the following described lands, and requests that the State be refunded

the filing fees expended. This relinquishment is made on account of the over-selection of lands under the Special Grant for University purposes as directed by the Honorable Commissioner of the General Land Office by his letter "G," dated June 6, 1905, and we hereby certify that the State of Idaho has in nowise encumbered any of the said described lands.

From Selection List No. 6, University purposes, dated 21st day of Apl., 1904.

Description.	Sec.	Twp.	Range.	Acres.
All	1	40N.	5E.	673.40
All	12	"	"	640
All	13	"	"	640
E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$,	17	"	"	160
N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and W. $\frac{1}{2}$ of SE. $\frac{1}{4}$,	18	"	"	160
NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$,	19	"	"	240
W. $\frac{1}{2}$ of NE. $\frac{1}{4}$,	20	"	"	80
W. $\frac{1}{2}$,	21	"	"	320
S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ and S. $\frac{1}{2}$ of SE. $\frac{1}{4}$,	24	"	"	160
N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$, and E. $\frac{1}{2}$ of SE. $\frac{1}{4}$,	25	"	"	280
Total				3353.40

By order of the State Board of Land Commissioners.

F. R. GOODING,
Governor, and President.

[Seal] Attest:

C. S. McCONNEL, Register. [2573—2243]

RECEIVED at

51 PO OD JR 14Paid.

Moscow, Idaho, Jun. 16th.

C. L. Marvin,
Boise, Idho.

State Cruisers on StJoe Can put on Some one else
what is the work.?

CHARLES J. MUNSON.

635P. [2574—2244]

DEPARTMENT OF THE INTERIOR.
UNITED STATES LAND OFFICE.

Received 6-15-05.

Lewiston, Idaho, June 12, 1905.

University

#6

J. J. Guheen Esq.,
Attorney General State of Idaho,
Boise, Idaho.

Sir:

Find enclosed herewith copy of decision of the Hon. Commissioner of the General Land Office under date of June 6, 1905, wherein the State of Idaho is allowed thirty days additional in which to take action as required by letter "G" of November 28, 1904, service of which was had on the State at that time, and if you fail to take action within the time

allowed, the selections held for the cancellation by said letter, will be canceled upon receipt of our report.

Very respectfully,

J. B. WEST,

Register. [2575—2245]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., June 6, 1905.

(G)

M. V. B.

Register and Receiver,

Lewiston, Idaho.

Sirs:

April 21, 1904, the State filed in your office List No. 6, of selections embracing 11,973.60 acres, made under the grant for the establishment and maintenance of a University at Moscow, Idaho, 11th section Act of July 3, 1890 (26 Stat. 215).

November 28, 1904, "G," this office instructed you to advise the proper officer of the State that this list covered selections which with the selections approved (23,774.18 acres), and the other selections pending unapproved (17,597.46 acres), amounted to 53,345.24 acres, or 3,345.24 acres in excess of the grant; that it would be necessary for the State to relinquish such an amount of the selections in list No. 6, as would bring the area of the pending selections to approximately the amount due the grant (30 L. D. 344); and that should it fail to do so, this office would cancel the described selected tracts last named in list No. 6, amounting to the excess.

December 24, 1904, the Hon. John A. Bagley, Attorney General for the State of Idaho, requested this office to take no action under said letter of November 28, 1904, pending the final decision in an appeal before the Department from the action of this office September 13, 1904, refusing to accept the relinquishment by the State of certain selections under other grants.

February 24, 1905, your office reported that no action had been taken by the State under decision of November 28, 1904.

By letter "G," of April 12, 1905, the case upon appeal [2576—2246] referred to by the Attorney General was finally disposed of, the relinquishment accepted, and the case closed. This case had no reference whatever to the list of selections in question and does not affect it in any way, but, as this office agreed by letter "G" of December 31, 1904, to the Attorney General of the State, to advise the State before taking final action upon these selections, you will advise the proper officer of the State of the condition of the list; that he will be allowed thirty days additional in which to take the action designated by letter "G" of November 28, 1904, and that if he fails to do so within the time allowed, the selections held for cancellation by said letter of November 28, 1904, will be canceled upon receipt of the report of your office.

Give notice in accordance with circular of March

1, 1900 (29 L. D. 649), and in due time report the action taken.

Very respectfully,

Acting Commissioner.

FLR.

(Endorsed:) List 6 University. [2577—2247]

Washington, D. C., Dec. 24th, 1904.

Hon. J. H. Fimple,

Acting Commissioner of the General Land Office.

Dear Sir:—

Referring to the conversation I had with you this morning in regard to the selection of certain lands by the State of Idaho, I desire to request: that the matters involved in your decision "G" to the Register and Receiver of the Lewiston, Idaho, land office, dated November 28th, 1904, and letter "G" to the Register and Receiver, Lewiston, Idaho, land office dated December 2nd, 1904, be retained in your office until *theian* be taken by the Secretary of the Interior upon the five appeals from your decision "G" to the Register and Receiver of the Lewiston, Idaho, land office, dated September 3rd, 1904.

These seven decisions all refer to the same matter, although to different lists, and we desire to furnish additional evidence to the Department upon the questions involved in the five cases appealed, therefore, request that you suspend further action in the matter involving your decisions "G" of November 28th, and December 2nd, 1904, and hold the same in your office until final action is taken in the five cases on appeal. Also that the State's rights to appeal these two de-

cisions be extended until action is taken on the five cases.

The Secretary this morning assured us that the State would be given permission to make an additional showing, either before the Land Department or the Commissioner.

Kindly advise me of your action in this matter at Boise City, Idaho.

Attorney General of the State of Idaho. [2578—2248]

“G” 221203-1904. E.P.H.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

WASHINGTON, D. C., Dec. 31, 1904.

Address only the

Commissioner of the General Land Office.

Hon. John A. Bagley,

Atty. General,

Boise, Idaho.

Sir: I am in receipt of your letter of December 24, 1904, asking that no action be taken upon letters “G” of November 28, and December 2, 1904, holding for cancellation certain selections of the State of Idaho, until a final decision is reached in five other cases pending on appeal before the Department from the action of this office in refusing to accept relinquishments aggregating some 45,000 acres.

In response I have to advise you that no final action will be taken in the premises without further notice to the State, but it is not now apparent how

any decision in the cases pending on appeal can affect the status of the cases under consideration. The letter of November 28, 1904, found that there was due the University grant 33102.98 acres, while the selections pending aggregated 36448.22 acres, and as the State is not, under the regulations, permitted to keep segregated any lands which with those approved will exceed the amount of the grant, the excess was held for cancellation.

The letter of December 2, 1903, found that there had been approved to the State for Insane Asylum 49994.87 acres leaving but 5.13 acres due. There were pending a selection of 40 acres in the Boise district and one of 80 acres in the Blackfoot district, and as no less than a legal subdivision could be approved neither of said tracts was available to satisfy the deficiency. [2579—2249]

I will be glad if you will explain more fully the reason for your request for the further suspension of action in these two cases and their connection with the other five.

Very respectfully,

J. H. FIMPLE,

Acting Commissioner.

AAH. [2580—2250]

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, December 6, 1904.

John A. Bagley,

Attorney General for State of Idaho,

Boise, Idaho.

Sir:

Find enclosed herewith copy of decision of the

Hon. Commissioner under date of November 28, 1904, wherein you are required to relinquish such an amount in list No. 6, as will bring the area of the pending selections to approximately the amount due the grant, the amount selected being 3,345.24 acres in excess of the amount allowed under said grant.

If you fail to comply therewith within sixty days, or to appeal therefrom, said selection will be canceled to the extent of the above amount of acreage. The description of lands held for cancellation is shown in the copy of decision herewith enclosed.

Very respectfully,

J. B. WEST,

Register. [2581—2251]

(G)

J. R. C.

W. H. L.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

WASHINGTON, D. C.

Address only the

1904.

Commissioner of the General Land Office.

Register and Receiver,

Lewiston, Idaho.

Sirs:

By the 11th section of the act of July 3, 1890 (26 Stats., 215), the State of Idaho was granted 50,000 acres of public land for the establishment and maintenance of a University. Under said grant there have been approved and certified to the State 16,897.02 acres, leaving 33,102.98 acres due to satisfy said grant.

April 21, 1904, the State filed in your office List No. 6 of said selections embracing 11,973.60 acres, which with the 24,474.62 acres of selections pending unapproved in this office amounted to 36,443.22 acres, or 3,345.24 acres in excess of the grant.

You will notify the proper officer of the State of this excess, advising him also that it will be necessary for the State to relinquish such an amount of the selections in said List No. 6, as will bring the area of the pending selections to approximately the amount due the grant. See instructions of November 10, 1900. 30 L. D., 344.

Upon failure of the State to comply with this requirement to appeal, herefrom, within the time allowed, the following selections of land, being the lands last enumerated on said list No. 6, which are hereby held for cancellation as being in excess of the quantity granted, will be canceled without further notice to the State, thus reducing the selections pending to approximately the amount allowed for the grant. [2582—2252] The selections held for cancellation are the SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 29, T. 40 N., R. 5 E., all of Sec. 11; S. $\frac{1}{2}$, Sec. 12; All of Sec. 19; S. $\frac{1}{2}$, Sec. 20; N. $\frac{1}{2}$, SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 23; E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 24; NE. $\frac{1}{4}$, E. $\frac{1}{2}$, NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 28, T. 40 N., R. 6 E.

Give notice in accordance with circular of March 1, 1900 (29 L. D., 649), and in due time report the action taken.

Very respectfully,
Commissioner.

FLR. [2583—2253]

DEPARTMENT OF THE INTERIOR.
UNITED STATES LAND OFFICE.

Lewiston, Idaho, Apr. 21, 1904.

J. B. Lafferty, being duly sworn according to law, deposes and says that he is the identical person who has been appointed by the State Board of Land Commissioners to apply for Government title to the

	Sec.	Town.	Range.	Area.
All	1	40	5 E.	673.40
All	2	"	"	675.20
All	3	"	"	676.68
All	4	"	"	677.68
S. 1/2,	8	"	"	320
S. 1/2,	9	"	"	320
E. 1/2, E. 1/2 SW. 1/4,	11	"	"	400
All	12	"	"	640
All	13	"	"	640
N. 1/2 NE. 1/4, N. 1/2 NW. 1/4, SE. 1/4 NW. 1/4, NE. 1/4 SW. 1/4, NW. 1/4 SE. 1/4,	17	"	"	280
W. 1/2 NE. 1/4, N. 1/2 SE. 1/4, SW. 1/4 SE. 1/4,	18	"	"	200
NE. 1/4, N. 1/2 SE. 1/4,	19	"	"	240
N. 1/2, W. 1/2 SW. 1/4,	20	"	"	400
N. 1/2 SW. 1/4, W. 1/2 SE. 1/4, SE. 1/4 SE. 1/4,	21	"	"	600
N. 1/2, NE. 1/4 SW. 1/4, NW. 1/4 SE. 1/4,	22	"	"	400
N. 1/2 SE. 1/4,	23	"	"	480
All	24	"	"	640
N. 1/2 NE. 1/4, SE. 1/4 NE. 1/4, N. 1/2 NW. 1/4, E. 1/2				

Sec. Town. Range. Area.

SE. $\frac{1}{4}$,	25	40	5E.	280
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,	26	"	"	40
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	27	"	"	40
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$,	28	"	"	280
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$,	29	"	"	40
All	11	40	6 E.	640
[2584—2254]				
S. $\frac{1}{2}$,	12	"	"	320
All	19	"	"	630.64
S. $\frac{1}{2}$,	20	"	"	320
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$,	23	"	"	560
E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$				
SE. $\frac{1}{4}$,	24	"	"	240
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$				
SE. $\frac{1}{4}$,	28	"	"	320

 11973.60

That he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no

salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Boise, Idaho.

(Signed) J. B. LAFFERTY.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ——), and that I verily believe him to be a credible person and the person he represents himself to be, and that this [2585—2255] affidavit was subscribed and sworn to before me at my office in Lewiston, within the Lewiston, Idaho, land district, on this 21st day of April, 1904.

(Signed) J. B. WEST,
Register.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but severally object to the same upon the ground that they are incompetent, irrelevant and immaterial. [2586—2256]

Mr. GORDON.—We offer in evidence special grant list No. 9, State Normal Selection, filed in the

United States Land Office at Lewiston, Idaho, April 21, 1904, which reads as follows:

“SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

NORMAL GRANT, ACT OF JULY 3, 1890, SECTION ———.

No. 9.

Lewiston Land District.

Filed Apl. 21, 1904.

Posted on Plat Book Dec. 6-05 by E. L. M.

Nor. 9. [2587—2257]

List No. 9, Exhibiting the Tracts of Public Lands Situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the ——— Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho for State Normal Schools.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
N. $\frac{1}{2}$ SW. $\frac{1}{4}$,	8	38	6 E.	80
N. $\frac{1}{2}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	13	“	“	600
All	14	“	“	640
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,	15	“	“	160
S. $\frac{1}{2}$,	17	“	“	320
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,	20	“	“	320
E. $\frac{1}{2}$, NW. $\frac{1}{4}$,	22	“	“	480
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$,	23	“	“	240
S. $\frac{1}{2}$, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	24	“	“	360
All (See ruling attached)	25	“	“	640
All	26	“	“	640

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
All	27	38	6 E.	640
NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$,	28	"	"	560
Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	30	"	"	157.40
Lots 1, 2, 3. 4. E. $\frac{1}{2}$ NW. $\frac{1}{4}$,				
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	31	"	"	474.16
E. $\frac{1}{2}$,	32	"	"	320
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, NW. $\frac{1}{4}$,	33	"	"	280
				<hr/>
				6911.56

[2588—2258]

List No. 9.

State Normal Selections.

Lewiston Land District.

6911 Acres 56/100.

Received and Filed April 21, 1904.

Ent. [2589—2259]

4-062.

NONMINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge and cannot be made on information and belief.

The nonmineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Lewiston, Idaho, Apr. 21, 1904.

M. L. Goldsmith, being duly sworn according to law, deposes and says that he is the identical person

who has been appointed by the State Board of Land Commissioners of Idaho for Government title to the

	Sec.	Town.	Range.	Area.
N. $\frac{1}{2}$ SW. $\frac{1}{4}$,	8	38	6 E.	80
N. $\frac{1}{2}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$				
SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	13	"	"	600
All	14	"	"	640
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$,	15	"	"	160
S. $\frac{1}{2}$,	17	"	"	320
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, W.				
$\frac{1}{2}$ SE. $\frac{1}{4}$,	20	"	"	320
E. $\frac{1}{2}$ NW. $\frac{1}{4}$,	22	"	"	480
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$,	23	"	"	240
S. $\frac{1}{2}$, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	24	"	"	360
All See ruling attached	25	"	"	640
All	26	"	"	640
All	27	"	"	640

[2590—2260]

NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S.				
$\frac{1}{2}$,	28	"	"	560
Lots 3, 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	30	"	"	157.40
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ NW.				
$\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	31	"	"	474.16
E. $\frac{1}{2}$,	32	"	"	320
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, NW. $\frac{1}{4}$,	33	"	"	280

6911.56

That he is well acquainted with the character of the said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly

with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring or deposits of salt in any form sufficient to render it chiefly valuable therefor, that no portion of said land is claimed for mining purposes under the local customs or rules or miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Spaulding, Idaho.

(Signed) M. L. GOLDSMITH.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ——), and that I verily believe him to be a credible person and the person he represents himself to be, and [2591—2261] that this affidavit was subscribed and sworn to before me at my office in Lewiston, within the Lewiston, Idaho, land district on this 21st day of April, 1904.

(Signed) J. B. WEST,

Register.” [2592—2262]

“N”

1907-199300.

C.C.H.

C.A.H.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

WASHINGTON, D. C., December 21, 1907.

Address only the

Commissioner of the General Land Office.

State list canceled in part.

Register and Receiver,

Lewiston, Idaho.

Sirs:

In the case of list No. 9 of Selections by the State of Idaho for Normal Schools, embracing with other lands all of Sec. 25, T. 38 N., R. 6 E., by office letter “N” of August 1st, 1907, you were directed to allow J. B. Collins, who filed protest alleging ownership of mining claims upon the E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 25 T. 38 N., R. 6 E., sixty days within which to apply for a hearing to determine the character of said tracts. November 13th, 1907, you transmitted a relinquishment signed by F. R. Gooding, Governor, and Chairman of the State Board, of Land Commissioners of all right, title and interest of the State in and to the E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 25, T. 38 N., R. 6 E., on account of mining claims of record.

The relinquishment is accepted and list 9 cancelled to the extent of the tracts above described.

The cancellation of said list renders further action on the protest of J. B. Collins unnecessary. That

portion of said letter of August 1, 1907, allowing a hearing is accordingly recalled. Notify the State authorities and mineral protestant hereof.

B. of L. R. by E. C. Tierney.

Very respectfully,

FRED DENNETT,

Asst. Commissioner. [2593—2263]

4-485.

DEPARTMENT OF THE INTERIOR.
UNITED STATES LAND OFFICE.

Lewiston, Idaho, December 31, 1907.

J. B. COLLINS

V.

STATE OF IDAHO.

Hon. M. I. Church, Register,
Boise, Idaho,

Recd. and Filed,
Jan. 3rd, 1908.
Referred to E. L. Marvin,
M. I. C. Register.

Sir: In reference to E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25, T. 38 N., R. 6 E., B. M., embraced in list No. 9, State of Idaho for Normal Schools, protested by J. B. Collins, alleging ownership of mineral claims, you are advised that under date of December 21, 1907, the Assistant Commissioner of the General Land Office accepted the relinquishment of the State to the extent of the tracts above described, and states that the cancellation of said list renders further action on the protest unnecessary.

Very respectfully,

T. H. BARTLETT,

7184 6-834

Register. [2594—2264]

Boise, Idaho, Nov. 5, 1907.

Register and Receiver,
United States Land Office,
Lewiston, Idaho.

Gentlemen:

The State of Idaho hereby waives, releases and relinquishes all right, title and interest in and to the East half of the South-west quarter, West half of the South-east quarter, South half of the North-east quarter, and the North-east quarter of the North-east quarter of Section twenty-five (25), Township thirty-eight (38) North, Range six (6) East, Boise Meridian, on account of mineral claims of record having been filed before making selections. I hereby certify that the state has in no way encumbered the said above described tract of land.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the State Board of Land Commissioners to be hereunto affixed.

By order of the State Board of Land Commissioners.

[Seal] (Signed) F. R. GOODING,
Governor and Chairman.

Attest: M. I. CHURCH,
Register.

(In pencil) Posted on plats }
 " " list } 12/3/07

E. L. M.

(280 acres) [2595—2265]

S. Belle Chamberlain,
Supt. Public Instruction.

M. I. Church,
Register and Secretary.

Boise, Idaho, July 13, 1907.

Hon. Edwin Snow,
Asst. Atty. Genl.,
Boise, Idaho.

Dear Sir: On June 26, 1907, I made personal examination of E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 25-T-38-N-R-6-E-B-M, and found the following mineral locations known as the "Oxford Group."

"Oceola" located by C. C. Lauder July 15th, 1903.

"Mountain State" located by C. C. Lauder June 27th, 1903.

"Mayflower" located by C. C. Lauder June 29th, 1903.

"Oxford" located by John B. Collins June 26, 1903.

"Yale" located by John B. Collins July 9th, 1903.

"Magpie" located by John B. Collins Jan. 1st, 1904.

I found on different parts of these claims four tunnels in good condition, the depths of these tunnels being as follows: 61 ft., 74 ft., 94 ft., and 109 ft. respectively. Also shafts 4x6 ft. and 24-28 and 60 feet in depth, and numerous other prospect holes from 2 to 12 feet deep.

These tunnels and shafts showed some very good mineral, and assays have been made showing values ranging from \$6 to \$1100 per ton.

The claims are all recorded and assessment work

has been done and recorded every year since their location. The land is rough and of no value for cultivation, the timber poor and will not average more than 125M. per 40, and consists almost entirely of black pine. This was a very poor selection and I recommend the relinquishment of these claims to the mine locators.

Respy. submitted,

CHARLES J. MUNSON. [2596—2266]

Report on Mineral Locations—Munson.

After looking into the matter of date of survey, filing of plat &c, I think Mr. Munson's recommendations should be followed.

(Signed) SNOW.

(In pencil) Relinquish. [2597—2267]

J. B. COLLINS,

Protestant,

vs.

STATE OF IDAHO,

Protestee.

INVOLVING The E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ SE. $\frac{1}{4}$,
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Sec. 25, Tp. 38
N., R. 6 E., B. M.

A sufficient affidavit having been filed in this office by J. B. Collins (pursuant to directions contained in letter M., 1907, No. 125303, dated August 1, 1907, wherein this protestant was allowed sixty days in which to apply for hearing to determine the character of the lands covered by this protest), wherein it is alleged that the E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and W. $\frac{1}{2}$ SE. $\frac{1}{4}$ and S. $\frac{1}{2}$ NE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of Sec. 25, Tp. 38 N. R. 6 E. B. M. are mineral lands;

The State of Idaho is hereby notified to appear and respond and offer evidence touching said allegations at ten o'clock A. M., November 15, 1907, before the Register and Receiver of the United States Land Office, in Lewiston, Idaho.

Dated this 11th day of September, 1907, at the United States Land Office at Lewiston, Idaho.

(Signed) T. H. BARTLETT,
Register. [2598—2268]

STATE OF IDAHO,

County of Nez Perce,—ss.

N. Warrington, being first duly sworn, says he is the foreman of the Pierce City Miner; that said Pierce City Miner is a Weekly Newspaper published and issued regularly and weekly at Pierce, Nez Perce County, Idaho, and is of general circulation throughout said county and state, having been published regularly for more than twelve months at the above-named place. That the notice of which the one hereunto attached is a true copy, was published in said newspaper for ten consecutive weeks, being published ten times, the first on June 14, 1907, and the last on August 16, 1907. That said notice was published in the regular and entire issue of said newspaper proper, and not in the supplement.

(Signed) N. WARRINGTON.

Subscribed and sworn to before me on this 17th day of August, 1907.

WILLIAM J. TODD,
Notary Public.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE.

NOTICE IS HEREBY GIVEN that the State of Idaho on the 21st day of April, 1904, filed in this office a list of lands No. 9 selected by the State Board of Land Commissioners for Normal School purposes under Section No. 9 Act of July 3, 1890, as follows;

All of Section twenty-five, township thirty-eight, north range six E. B. M.

Copies thereof by descriptive subdivisions have been posted in this office for inspection by any person interested, and the public generally. [2599—2269]

Within the next sixty days from the date of the first publication hereof, protests or contests against the claim of the State to the tracts or subdivisions herein described, on the ground that the same is more valuable for mineral than for other purposes, will be received and noted for report to the General Land Office at Washington, D. C.

Failure to protest or contest the claim of the State within the time specified, will be considered sufficient evidence of its non-mineral character, and the selection being otherwise free from objection, will be recommended for approval.

(Signed) T. H. BARTLETT,
Register.

BENJAMIN C. BARBOR, Receiver.

First publication June 14.

Last publication August 16. [2600—2270]

Lewiston, Idaho, June 5, 1907.

Mr. E. L. Marvin,
Special Agent Land Department,
Boise, Idaho.

Dear Sir:

As requested in your letter of May 20th, I herewith return to you a copy of the notice for publication of List No. 9, Normal Schools, one copy of which has been transmitted this day to the *Pierce Miner* for publication.

Permit me to ask for a bit of information. It is noticed that the advertisement is made for Normal School purposes under Section nine (9) of the Act of July 3, 1890. Reference to section 9 of this act discloses that reference is made to the claim of Penitentiary at Boise, Idaho Territory. Is there some other act of July 3, 1890, that I have failed to discover? Will you give me a further citation to this section?

Very respectfully,

T. H. BARTLETT,

Register. [2601—2271]

May 20 7

Register and Receiver,
U. S. Land Office,
Lewiston, Idaho.

Gentlemen:

I send you herewith in triplicate notices for the publication of "notice of selection" by the State of Idaho in its Normal School List No. 9, filed in your office April 21, 1904, for all of Sec. 25 Tp. 38 N., R. 6 E.

This action is in compliance with the directions given in the commissioner's letter of April 5, 1907, but does not embrace all the lands mentioned, as with the exception of Sec. 25 all have been clear-listed and approved to the State.

Will you kindly designate the paper in which this publication is to be made, forwarding one copy *to* the same to the publishers and returning one copy to me for my information.

Yours truly,

E. L. W. [2602—2272]

UNITED STATES LAND OFFICE,

Lewiston, Idaho, April 11, 1907.

J. B. COLLINS

vs.

STATE OF IDAHO.

Involving Selection List No. 9 for State Normal School. Publication and Corroborative Affidavit by Protestant Required.

Hon. J. J. Guheen,
Boise, Idaho.

Sir:

In reference to the above-entitled case you are advised that under date of April 5, 1907, the Honorable Commissioner of the General Land Office required the State of Idaho, within sixty days, to begin proceedings looking to the giving of notice of publication for thirty days, and posting on each legal subdivision for the same period, and also in this

office, as set forth in copy of letter transmitted.

Very respectfully,

T. H. BARTLETT,

Reg. Ma. 1.

Register.

6454 [2603—2273]

GENERAL LAND OFFICE,

WASHINGTON, D. C., April 5, 1907.

Address only the

Commissioner of the General Land Office.

Received Apr. 9, 1907.

U.

S.

Land Office, Lewiston.

J. B. COLLINS

vs.

STATE OF IDAHO.

Involving Selection List No. 9 for State Normal School. Publication and Corroborative Affidavit by Protestants Required.

(In pencil:) All clear listed except Sec. 25.

Register and Receiver,

Lewiston, Idaho.

Sirs:

April 21, 1904, the State filed list No. 9 of selections for State Normal school embracing the N. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 8, N. $\frac{1}{2}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$, Sec. 13, all Sec. 14, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 15, S. $\frac{1}{2}$ Sec. 17, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 20, E. $\frac{1}{2}$, NW. $\frac{1}{4}$, Sec. 22, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 23, S. $\frac{1}{2}$, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 24, all sections 25, 26, and 27, NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and S. $\frac{1}{2}$, Sec. 28, Lots 3 and 4, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,

Sec. 30, Lots 1, 2, 3, 4, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ and SE. $\frac{1}{4}$, Sec. 31, E. $\frac{1}{2}$ Sec. 32, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, and NW. $\frac{1}{4}$, Sec. 33, T. 38 N., R. 6 E., Boise Meridian.

August 3, 1904, you transmitted the protest of J. B. Collins alleging the mineral character of the E. $\frac{1}{2}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25, said township and ownership by location and purchase of certain mining claims situated on the tracts last above described. The protest is under oath, but is entirely uncorroborated and is not sufficient in its present form to justify a hearing. In view, however, of the alleged location of mining claims valuable for gold, situated within the limits of said township the State will be required to give notice by publication, for thirty days, and posting on each legal subdivision of [2604—2274] the land for the same period, accompanied by posting in your office. Advise the State hereof and allow sixty days to begin proceedings in compliance herewith in default of which, and of appeal, the selections will be rejected without further notice from this office. You will advise mineral protestant that he will be allowed sixty days within which to file corroborative affidavits in support of his protest in default of which, and of appeal, the protest will be finally dismissed. Advise all parties in interest, and at the proper time transmit evidence

of service, and your report.

Very respectfully,

R. A. BALLINGER,

Commissioner.

FLR. [2605—2275]

(Envelope addressed to:)

Hon. J. J. Guheen,

Attorney General State of Idaho,

BOISE,

Idaho.

(Endorsed:)

Lewiston, Idaho, April 11, 1907, Registered.

(Return:)

DEPARTMENT OF THE INTERIOR,

United States Land Office,

Lewiston, Idaho.

(Notation on Envelope:)

Normal School #9, Lewiston Publ. required 60
days from April 11. 5765.

#24.

Reg. Mail. [2606—2276]

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., June 6, 1905.

M. V. B.

Address only the

Commissioner of the General Land Office.

Register and Receiver,

Lewiston, Idaho.

Sirs:

By letter of September 13, 1904, "G," of this office

List No. 9 of Selections for State Normal Schools embracing 6,911.56 acres, was held for cancellation as to a number of selections as being largely in excess of the grant under act of July 3, 1890, (26 Stat., 215).

April 12, 1905, "G," this office accepted the relinquishment filed by the State, February 3, 1904, of 5,803 acres of selected lands, covered by selections in list No. 8, for Normal Schools. As this action reduced the number of acres selected to be less than the amount allowed under the grant, the action of said letter of September 13, 1904, holding the selections in list No. 9, for cancellation, is hereby revoked.

So advise the proper officer of the State,

Very respectfully,

Acting Commissioner.

FLR. [2607—2277]

Mr. TANNAHILL.—The defendants severally waive any further identification of the letters attached to the lists, but object to the admission of each and all thereof in evidence upon the ground that they are incompetent, irrelevant and immaterial, and the defendants severally object to the lists upon the ground they are incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence special grant selection list No. 6, Scientific Schools, filed in the United States land office at Lewiston, Idaho, April 21, 1904, which reads as follows:

SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Scientific Schools Grant, Act of July 3, 1890, SECTION ———.

No. 6.

Lewiston Land District.

Filed Apl. 21st, 1904. Accepted Apl. 21st, 1904.

Posted on Plat Book Dec. 7-05, by E. L. M.

List No. 6 Exhibiting the Tracts of Public Lands Situated in the District of Lands Subject to Sale at Lewiston, Idaho, which have been selected by the State of Idaho under the provisions of the ——— Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Scientific Schools.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$	5	38 N.	5 E.	120
Lots 2, 3, 4, 5, 6, 7, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$	6	"	"	408.64
Lots 1, 2, 3, NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	7	"	"	551.81
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$,	8	"	"	280
S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$	9	"	"	120

[2608—2278]

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$,	15	38 N.	5 E.	160
N. $\frac{1}{2}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, 17	"	"	"	480
Lots 4, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, 18	"	"	"	237.13
Lots 1, 2, 3, NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	19	"	"	471.11
SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$,	20	"	"	240
S $\frac{1}{2}$ SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ 21	"	"	"	120
N. $\frac{1}{2}$ SW. $\frac{1}{4}$,	22	"	"	80
N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	24	"	"	240
S. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	25	"	"	160
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$,	26	"	"	360
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$,	27	"	"	480
S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, 28	"	"	"	400
All,	29	"	"	640
E $\frac{1}{2}$,	30	"	"	320
NE. $\frac{1}{4}$,	31	"	"	160
W. $\frac{1}{2}$ NW. $\frac{1}{4}$,	32	"	"	80
NE. $\frac{1}{4}$ NE. $\frac{1}{4}$,	33	"	"	40
NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$,	34	"	"	520
All,	35	"	"	640

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
Lot 7, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$				
SE. $\frac{1}{4}$,	6	39 N.	5E	157.17
Lots 1, 2, 3, 4, NE. $\frac{1}{4}$, E. $\frac{1}{2}$				
NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$,	7	"	"	469.60
SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.				
$\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	17	"	"	160
All,	18	"	"	631.96
Lots 1, 2, NE. $\frac{1}{4}$, E. $\frac{1}{2}$				
NW. $\frac{1}{4}$,	19	"	"	317.19
SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$,				
W. $\frac{1}{2}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE.				
$\frac{1}{4}$,	20	"	"	360
W $\frac{1}{2}$,	21	"	"	320
NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$,	28	"	"	240
N. $\frac{1}{2}$ NW. $\frac{1}{4}$,	29	"	"	80
Lots 3, 4, E $\frac{1}{2}$ SW. $\frac{1}{4}$,	30	"	"	159.62
Lots 1, 2, 3, 4, SW. $\frac{1}{4}$ NE.				
$\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$				
SW. $\frac{1}{4}$, and SE. $\frac{1}{4}$,	31	"	"	520
[2609—2279]				
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$				
SW. $\frac{1}{4}$,	32	"	"	80
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE.				
$\frac{1}{4}$,	33	"	"	120
				<hr/>
				10924.23

List No. 6.

Scientific Schools Selections.

Lewiston Land District.

10,924 Acres 25/100.

Received and Filed April 21, 1904.

Entd—MC.

Mr. TANNAHILL.—The defendants severally waive any further identification of the list offered, but severally object to the same upon the ground that it is incompetent, irrelevant and immaterial.
[2610—2280]

Mr. GORDON.—We also offer in evidence special grant selection list No. 6, Amendatory, State Normal, filed in the United States Land Office at Lewiston, Idaho, August 12, 1898, which reads as follows:

SPECIAL GRANT SELECTION LIST.

IDAHO STATE LAND DEPARTMENT.

Normal Grant, Act of July 3, 1890, Section ———.

No. 6 (Amendatory).

Lewiston Land District.

Filed 8—12—1898.

Posted on Plat Book Dec. 6—05. By E. L. M.

(Endorsed on cover in lead pencil:) Original List

#6 missing.

List No. 6 Exhibiting the Tracts of Public Lands Situated in the District of Lands subject to sale at Lewiston, Idaho, which have been selected by the State of Idaho, under the provisions of the ——— Section of the Act of Congress approved July 3, 1890, in satisfaction of the grant to said State of Idaho, for Normal Schools.

Description of Tracts Selected.	Sec.	Town.	Range.	Area of Tracts.
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$	3	41N.	1W.	280
All of	4	"	"	640
E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, 5	5	"	"	320
W. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW. $\frac{1}{4}$,	9	"	"	160
NW. $\frac{1}{4}$,	10	"	"	160
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$,	15	"	"	40
NE. $\frac{1}{4}$, Lots 1, 4, W. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, Lots 2, 3, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$,	23	"	"	400
N. $\frac{1}{2}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, Lots 1, 2, 3, 4,	27	"	"	315.92
[2611—2281]				
NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Lots 1, 2, 3, 4, 5, 8,	34	"	"	407.80
SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	11	"	"	40
				2826.72

Mr. TANNAHILL.—The defendants severally object to the list on the ground that it is incompetent, irrelevant and immaterial. [2612—2282]

Office of State Auditor of the State of Idaho,
Boise, Idaho.

October 1, 1910.

[Testimony of George W. Lewis, for Complainant.]

GEORGE W. LEWIS, a witness called on behalf of the complainant, being first duly sworn by S. D. Taylor, State Auditor, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is George W. Lewis, is it?

A. Yes, sir.

Q. Do you occupy any official position in the State of Idaho at the present time?

A. Well, as deputy State Auditor.

Q. As deputy State Auditor, Mr. Lewis, have you in your custody the records of the persons who were employed in State selections made during the administration of Governor Morrison in North Idaho?

A. I believe we have.

Q. Have you them with you? A. Yes, sir.

Q. Are the papers that you hold in your hand a part of the files of your office, a part of the records and files of your office? A. Yes, sir.

Mr. GORDON.—We offer said papers and records in evidence, and read the same into the record, as follows:

“AUDITOR’S DEPARTMENT.

Boise, Idaho, April 19th, 1904.

TO CLAIMANTS:

The State Board of Examiners meets on the first and third Tuesday in each month. No claim is considered by the Board at its meeting on the first Tuesday in the month which was not on file with the State Auditor on the Saturday preceding such first Tuesday, and no claim is considered [2613—2283] by the Board at its meeting on the third Tuesday which was not on file with the Auditor on the Saturday preceding such third Tuesday.

STATE OF IDAHO.

To William Dwyer, Dr. Audited.

~~Clarkston~~, Idaho.

Lewiston

March 24.	Transportation Lewiston to Oro-	
	fino	\$1.25
April 19.	28 days’ labor as selector from	
	March 23 to April 19.....	140.00
		<hr/>
		\$141.25

O.K.—NORMAN JACKSON,

4/26/04

Chief Clerk.

State of Idaho,

County of Nez Perce,—ss.

William Dwyer, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that the services, supplies or other items of any and every kind and nature whatsoever, if any, therein set out, have

been rendered or furnished or expended by claimant to or for the State of Idaho, and that no part of the same has been paid; and further that the correct amount justly due and owing to claimant on the within stated account is One Hundred Forty One and 25/100 Dollars. (\$141.25)

WILLIAM DWYER,
Affiant's Signature.

Subscribed and sworn to before me this 19 day of Apr. 1904.

C. A. HASTINGS,
Treas. Nez Perce Co., Idaho. [2614—2284]
(Indorsed:) Leave This Filing Blank.

VOUCHER

No. 6506.

Claim of William Dwyer for Services and Expense.
Filed May 2, 1904.

Referred May 3, 1904.

Land Department Office General Appropriation
Paid by Warrant No. 5743.

THEO. TURNER,
State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$141.25) Dollars and authorize the State Auditor to

issue a warrant for that amount, payable out of the
——— Fund.

Dated this Jun. 7, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IDAHO.

By JOHN T. MORRISON,
Chairman.

WILL H. GIBSON,
Secretary of State.

JOHN A. BAGLEY,
Attorney General.

Apr. 27, 1904.” [2615—2285]

“AUDITOR’S DEPARTMENT.

Original. Boise, Idaho, June 20, 1904.

STATE OF IDAHO.

To Wm. Dwyer, Dr. Audited.
Lewiston, Idaho.

June 20.	To 12 days’ work, selecting land in	
	Twp. 39 N., R. 4 E., June 6 to 18,	
	inclusive	60.00
	To R. R. fare, Lewiston to Orofino	
	& return	2.50
		<hr/>
		62.50

O.K.—NORMAN JACKSON,
6/23/04 Chief Clerk.

State of Idaho,
County of Nez Perce,—ss.

Wm. Dwyer, being first duly sworn, deposes and
says that he is the person or the agent of the person,
presenting the within claim; that each of the items

thereof is a just and legal charge against the State of Idaho for services rendered or supplies furnished thereto; that the prices therein charged are reasonable and are not greater than the prices usually charged private purchasers or employers for the same or similar articles or services; that each and the whole of each and all of said items are now legally due and owing to claimant; and that the correct amount due to claimant from the State of Idaho upon the within stated account is Sixty-two & 50/100 Dollars, (\$62.50).

WILLIAM DWYER,

Affiant's Signature.

Subscribed in my presence by the said Wm. Dwyer and by him sworn to before me this 20th day of June, A. D. 1904.

[Notarial Seal]

JOHN B. ANDERSON,

Notary Public. [2616—2286]

(Endorsed:) Leave this filing blank.

VOUCHER

No. 7,139.

Claim of William Dwyer for Services.

Filed July 2, 1904.

Referred July 5, 1904.

Land Department Office.

Gen. Appropriation Paid by Warrant No. 6020.

THEO. TURNER,

State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$62.50) Dollars and authorize the State Auditor to issue a

warrant for that amount, payable out of the ———
Fund.

Dated this Jul. 5, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IDAHO.

By JOHN T. MORRISON,
Chairman.

WILL H. GIBSON,
Secretary of State."

Mr. TANNAHILL.—The defendants severally
waive any further identification of the documents
offered, but object to each and all thereof upon the
ground that they are incompetent, irrelevant and
immaterial.

Mr. GORDON.— [2617—2287]

"AUDITOR'S DEPARTMENT

TO CLAIMANTS: Boise, Idaho, April 19, 1904.

Audited.

The State Board of Examiners
meets on the first and third Tuesday
in each month. No claim is consid-
ered by the Board at its meeting on
the first Tuesday in the month which
was not on file with the State Auditor
on the Saturday preceding such first
Tuesday, and no claim is considered
by the Board at its meeting on the
Third Tuesday which was not on file
with the Auditor on the Saturday
preceding such third Tuesday.

STATE OF IDAHO.

To Edwin Bliss, Dr.

Mar. 24.	Transportation Lewiston to Orofino	1.25
Apr. 19.	" Orofino to Lewiston	1.25
" 19.	27 days' labor as selector Mar. 24 to April 19.....	135.

137.50

O.K.—NORMAN JACKSON,
4/26/04 Chief Clerk.

State of Idaho,

County of Nez Perce,—ss.

Edwin Bliss, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that the services, supplies or other items of any and every kind and nature whatsoever, if any, therein set out, have been rendered or furnished or expended by claimant to or for the State of Idaho, and that no part of the same has been paid; and further that the correct amount justly due and owing to claimant on the within stated account is One Hundred thirty seven and 50/100 Dollars, (\$137.50).

EDWIN BLISS,

Affiant's Signature. [2618—2288]

Subscribed and sworn to before me this 19 day of Apr., 1904.

C. A. HASTINGS,

Treas. Nez Perce Co., Idaho.

(Endorsed:) Leave this filing blank.

VOUCHER No. 6507.

Claim of Edwin Bliss for Services and Expense.

Filed May 2, 1904.

Referred May 3, 1904.

Land Department Office.

General Appropriations.

Paid by Warrant No. 5744.

THEO. TURNER,

State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$137.50) Dollars and authorize the State Auditor to

issue a warrant for that amount, payable out of the
 ——— Fund.

Dated this June. 7, 1904.

BOARD OF EXAMINERS OF THE STATE
 OF IDAHO.

By JOHN T. MORRISON,
 Chairman.

WILL H. GIBSON,
 Secretary of State.

JOHN A. BAGLEY,
 Attorney General.

Apr. 27, 1904.” [2619—2289]

“AUDITOR’S DEPARTMENT.

Original. Boise, Idaho, June 20, 1904.

STATE OF IDAHO.

To EDWARD BLISS, Dr. AUDITED.
 Lewiston, Idaho.

June 20.	To 12 days’ work selecting land in Twp. 39 N., R. 4 E., June 6 to 18 inclusive	60.00
“	R. R. fare, Lewiston to Orofino and return.....	2.50
		<hr/> 62.50
	Horse feed at Cow Creek Road House.....	5.00
		<hr/> 67.50

O.K.—NORMAN JACKSON,
 6/23/04 Chief Clerk.

State of Idaho,
County of Nez Perce,—ss.

Edward Bliss, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that each of the items thereof is a just and legal charge against the State of Idaho for services rendered or supplies furnished thereto; that the prices therein charged are reasonable and are not greater than the prices usually charged private purchasers or employers for the same or similar articles or services; that each and the whole of each and all of said items are now legally due and owing to claimant; and that the correct amount due to claimant from the State of Idaho upon the within stated account is *Sixty-two & 50/100* Dollars (\$67.50).

EDWARD BLISS,
Affiant's Signature. [2620—2290]

Subscribed in my presence by the said Edward Bliss and by him sworn to before me this 20th day of June, A. D. 1904.

[Seal]

E. O'NEILL,

Notary Public in and for Nez Perce County, State
of Idaho.

(Endorsed:) Leave this filing blank.

VOUCHER No. 7137.

Claim of Edward Bliss for Expenses.

Filed July 2, 1904.

Referred July 5, 1904.

Land Department Office.

Gen. Appropriations.

Paid by Warrant No. 6018.

THEO. TURNER,

State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$67.50) Dollars, and authorize the State Auditor to issue a warrant for that amount, payable out of the ——— Fund.

Dated this Jul. 5, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IDAHO.

By JOHN T. MORRISON,

Chairman.

WILL H. GIBSON,

Secretary of State.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but object to each and all thereof upon the ground that they are incompetent, irrelevant and immaterial. [2621—2291]

Mr. GORDON.—We also offer the following:

“AUDITOR’S DEPARTMENT.

TO CLAIMANTS: Boise, Idaho, April 19, 1904.

AUDITED.

The State Board of Examiners meets on the first and third Tuesday in each month. No claim is considered by the Board at its meeting on the first Tuesday in the month which was not on file with the State Auditor on the Saturday preceding such first Tuesday, and no claim is considered by the Board at its meeting on the Third Tuesday which was not on file with the Auditor on the Saturday preceding such third Tuesday.

STATE OF IDAHO

To. M. C. Scott, Dr.

Lewiston.

March 26.	Transportation Lewiston to N.	
	Lapwia.....	.30
Apr. 18.	“ Orofino to Lew-	
	iston.....	1.25
“ 19. 25 days’ labor as selector from		
	March 26 to April 19.....	125.00
		<hr/>
		\$126.55

O.K.—NORMAN JACKSON,

4/26/04

Chief Clerk.

State of Idaho,

County of Nez Perce,—ss.

M. C. Scott, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that the services, supplies or other items of any and every kind and nature whatsoever, if any, therein set out, have been rendered or furnished or expended by claimant to

or for the State of Idaho, and that no part of the same has been paid; and further that the correct amount justly due and owing to claimant on the within stated account is One Hundred twenty six and 55/100 Dollars (\$126.55).

M. C. SCOTT,
Affiant's Signature. [2622—2292]

Subscribed and sworn to before me this 19 day of Apr., 1904.

C. A. HASTINGS,
Treas. Nez Perce Co.

(Endorsed:) Leave this filing blank.

VOUCHER No. 6505.

Claim of M. C. Scott for Expense and Services.

Filed May 2, 1904.

Referred May 3, 1904.

Land Department Office.

General Appropriation.

Paid by Warrant No. 5441.

THEO. TURNER,
State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$126.55) Dollars and authorize the State Auditor to issue a warrant for that amount, payable out of the ——— Fund.

Dated this May 3, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IDAHO.

By JOHN T. MORRISON,
Chairman.

WILL H. GIBSON,
Secretary of State.

Apr. 27, 1904." [2623—2293]

“AUDITOR’S DEPARTMENT.

ORIGINAL.

Boise, Idaho, June 20, 1904.

AUDITED.

STATE OF IDAHO.

To Melvern C. Scott, Dr.

1904.

Lewiston, Idaho.

June 20. To 13 days’ work selecting timber in

Twp. 39 N., R. 4 E., June 6 to 21

inclusive..... 65.00

“ R. R. fare, Lewiston to Orofino

& return..... 2.50

67.50

O.K.—NORMAN JACKSON,

6/23/04

Chief Clerk.

State of Idaho,

County of Nez Perce,—ss.

Melvorn C. Scott, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that each of the items thereof is a just and legal charge against the State of Idaho for services rendered or supplies furnished thereto; that the prices therein charged are reasonable and are not greater than the prices usually charged private purchasers or employers for the same or similar articles or services; that each and the whole of each and all of said items are now legally due and owing to claimant; and that the correct amount due to claimant from the State of Idaho upon the within stated account is Sixty Seven & 50/100 Dollars, (\$67.50).

MELVERN C. SCOTT,

Affiant’s Signature. [2624—2294]

Subscribed in my presence by the said Melvern C. Scott and by him sworn to before me this 20th day of June, A. D. 1904.

[Notarial Seal]

E. O'NEILL,

Notary Public in and for Nez Perce County, State of Idaho.

(Endorsed:) Leave this filing blank.

VOUCHER No. 7138.

Claim of Melvern C. Scott for Services selecting timber and R. R. fare.

Filed July 2, 1904.

Referred July 5, 1904.

Land Department Office.

Gen. appropriation.

Paid by Warrant No. 6019.

THEO. TURNER,

State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$67.50) Dollars and authorize the State Auditor to issue a warrant for that amount, payable out of the ——— Fund.

Dated this Jul. 5, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IADHO.

By JOHN T. MORRISON,

Chairman.

WILL H. GIBSON,

Secretary of State." [2625—2295]

“AUDITOR’S DEPARTMENT.

ORIGINAL TO CLAIMANTS:

Boise, Idaho, Aug. 12th, 1904.

AUDITED.

The State Board of Examiners meets on the first and third Tuesdays in each month. No claim is considered by the Board at its meeting on the first Tuesday in the month which was not on file with the State Auditor on the Saturday preceding such first Tuesday, and no claim is considered by the Board at its meeting on the Third Tuesday which was not on file with the Auditor on the Saturday preceding such third Tuesday.

STATE OF IDAHO.

To M. C. SCOTT,

Lewiston, Idaho.

(P. O. address of Claimant must appear here.)

July 23. To transportation Lewiston to
Orofino 1.25

Aug. 4. To transportation Orofino to
Lewiston 1.25

“ 12. To 15 days’ salary as selector
(July 23 to Aug. 6) 75.00

\$77.50

O. K.—J. B. LAFFERTY,

O. K.—NORMAN JACKSON,

8/15/04

Chief Clerk.

State of Idaho,

County of Nez Perce,—ss.

M. C. Scott, being first duly sworn, deposes and says that he is the person, or the agent of the person, presenting the within claim; that the services supplies or other items of any and every kind and nature

whatsoever, if any, therein set out, have been rendered or furnished or expended by claimant to or for the State of Idaho, and that no part of the same has been paid; and further, that the correct amount justly due and owing to claimant on the within stated account is Seventy-seven and 50/100 Dollars (\$77.50).

M. C. SCOTT.

(Affiant's Signature.)

Subscribed and sworn to before me this 12th day of August, 1904.

[Notarial Seal]

E. O'NEILL,

Notary Public in and for Nez Perce County, Idaho.

[2626—2296]

(Endorsed:) Leave this filing blank.

Rec'd Sep. 8, 1904.

VOUCHER NO. 7852.

Claim of M. C. Scott for services.

Filed Sept. 5, 1904.

Referred Sept. 6, 1904.

Land Dept. Office.

Genl. Appropriation.

Paid by Warrant No. 6603.

THEO. TURNER,

State Auditor.

We hereby certify that we have examined the within and approve the same for the sum of (\$77.50) Dollars, and authorize the State Auditor to issue a

warrant for the amount, payable out of the ——
Fund.

Dated this Sep. 6, 1904.

BOARD OF EXAMINERS OF THE STATE
OF IDAHO.

By JOHN T. MORRISON,
Chairman.

WILL H. GIBSON,
Secretary of State.

Aug. 19, 1904." [2627—2297]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but object to each and all thereof upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. I will ask you whether there is, in the office, any appointment of Mr. Dwyer or Mr. Scott or Mr. Bliss as assistant land selectors, or anything showing that they were employed, other than the vouchers which you have identified and which have been read in evidence?

A. Nothing that we have been able to find.

Mr. GORDON.—That will be all, Mr. Lewis.
Thank you. [2628—2298]

Office of the United States Marshal, Boise, Idaho.
Oct. 1, 1910.

**[Testimony of Shadrach L. Hodgkin, for
Complainant.]**

SHADRACH L. HODGIN, a witness called on behalf of the complainant, being first duly sworn by A. L. Richardson, Clerk of the United States District and Circuit Courts for the District of Idaho, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your full name?

A. Shadrach L. Hodgkin.

Q. You are at present United States Marshal for the District of Idaho? A. Yes, sir.

Q. Have you in your possession the returns on the subpoenas that were issued on behalf of the complainant in the cases of United States vs. William F. Kettenbach and others, numbered in equity 388, 406, and 407? A. Yes.

Q. I will ask you, Mr. Hodgkin, were subpoenas issued and placed in your hands for James C. Evans, Joseph B. Clute, William E. Helkenberg, Edward M. Hyde, George Morrison, Wren Pierce and George W. Harrington? A. Yes, sir.

Q. And has diligent search been made for those witnesses and the return upon the subpoena been entered that they were not found? A. Yes, sir.

[2629—2299]

Mr. GORDON.—We offer in evidence an indictment, numbered 615, entitled United States of Amer-

ica vs. William F. Kettenbach, George H. Kester and William Dwyer, found and returned by a grand jury of the United States in and for the District of Idaho, Northern Division thereof, and filed in the United States District Court for the District of Idaho, November 5th, 1905.

Said document was thereupon marked by the stenographer as Complainant's Exhibit No. 104.

Mr. TANNAHILL.—The defendants severally waive any further identification of the indictment offered, but object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We also offer in evidence an indictment entitled United States vs. Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, numbered 605, found and returned by a grand jury of the United States District Court for the District of Idaho, Central Division thereof, and filed in said court on the 13th day of July, 1905.

Said document was thereupon marked by the stenographer as Complainant's Exhibit No. 105.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document offered, but object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence an indictment entitled United States vs. William Dwyer, George H. Kester and William F. Kettenbach, numbered 607, found and returned by the United States grand jury for the District of Idaho, Central Divi-

sion thereof, and filed in the United States District Court for the District of Idaho, Central Division thereof, on the — day of July, 1905.

Said document was thereupon marked by the stenographer as [2630—2300] Complainant's Exhibit No. 106.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document offered, but object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence the verdict returned by the trial jury in case No. 615, entitled United States vs. William F. Kettenbach, George H. Kester, William Dwyer, June 17, 1907, which reads as follows:

*“United States District Court, Northern Division,
District of Idaho.*

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Verdict.

We, the jury in the above-entitled cause, find the defendant William F. Kettenbach not guilty as charged in the first count of the indictment; and we find the defendant William F. Kettenbach not guilty as charged in the second count of the indictment; and we find the defendant William F. Kettenbach

guilty as charged in the third count of the indictment; and we find the defendant William F. Kettenbach guilty as charged in the fourth count of the indictment; and we find the defendant William F. Kettenbach not guilty as charged in the fifth count of the indictment; and we find the defendant George H. Kester not guilty as charged in the first count of the indictment; and we find the defendant George H. Kester not guilty as charged in the second count of the indictment; and we find the defendant George H. Kester guilty as charged in the third count of the indictment; and we find the defendant George H. Kester guilty as charged in the fourth count of the indictment; and we find the defendant George H. Kester not guilty as charged in the [2631—2301] fifth count of the indictment; and we find the defendant William Dwyer not guilty as charged in the first count of the indictment; and we find the defendant William Dwyer not guilty as charged in the second count of the indictment; and we find the defendant William Dwyer guilty as charged in the third count of the indictment; and we find the defendant William Dwyer guilty as charged in the fourth count of the indictment; and we find the defendant William Dwyer not guilty as charged in the fifth count of the indictment.

M. D. FREDENBERG,

Foreman of the Jury."

Mr. TANNAHILL.—The defendants waive any further identification of the document, but object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence the judgment against William F. Kettenbach and George H. Kester, in said case 615, which reads as follows:

“In the District Court of the United States for the Northern Division of the District of Idaho.

May Term, A. D. 1907.

No. 615.

Present: Hon. FRANK S. DIETRICH, Judge.

CONVICTED OF CONSPIRACY.

THE UNITED STATES

Against

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

**Judgment (Against Wm. F. Kettenbach and Geo. H.
Kester).**

Now, on this 17th day of June, 1907, the United States District Attorney, with the defendants Wm. F. Kettenbach and George H. Kester, and their counsel, Messrs. Forney & Moore and Geo. W. Tannahill, Esq., came into court; the defendant was duly informed by the Court [2632—2302] of the nature of the indictment found against them for the crime of conspiracy committed on April 25, 1904, and Aug. 23, A. D. 1904, of their arraignment and plea of ‘Not Guilty as charged in said indictment,’ of their trial and the verdict of the jury on the 17th day of June, A. D. 1907, ‘Guilty as charged in the indictment.’ The defendants were then asked by the Court if they had any legal cause to show why judgment should not be pronounced against them, to which they replied that they had none, and no sufficient cause being

shown or appearing to the Court.

Now, therefore, the said defendants Wm. F. Kettenbach and Geo. H. Kester having been convicted of the crime of conspiracy:

It is hereby considered and adjudged that the said defendants Wm. F. Kettenbach and Geo. H. Kester each do pay a fine of One Thousand (\$1,000.00) Dollars, and the costs of this action taxed at —— Dollars, and that they stand committed until said fine is paid.

And that they each be imprisoned and kept at hard labor in the County Jail of —— county at —— for the term of eight months, and it is further ordered that there be a stay of execution on the judgment until the further order of the Court pending appeal.”

Mr. TANNAHILL.—The defendants severally waive any further identification of the document but object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence the judgment against William Dwyer in said case 615, which reads as follows:

*“In the District Court of the United States for the
Northern Division of the District of Idaho.*

May Term, A. D. 1907.

Present: Hon. FRANK S. DIETRICH, Judge.
CONVICTED OF CONSPIRACY. [2633—2303]
THE UNITED STATES

Against

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM

Judgment (Against William Dwyer).

Now, on this 17th day of June, 1907, the United States District Attorney, with the defendant Wm. Dwyer and his counsel, Messrs. Forney & Moore and Geo. W. Tannahill, Esq., came into court; the defendant was duly informed by the Court of the nature of the indictment found against him for the crime of conspiracy, committed on Apr. 25, 1904, and Aug. 23, A. D. 1904, of his arraignment and plea of ‘Not guilty as charged in the indictment,’ of his trial and the verdict of the jury on the 17th day of June, A. D. 1907, ‘Guilty as charged in the indictment.’ The defendant was then asked by the Court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendant having been convicted *by* the crime of conspiracy: It is hereby considered and adjudged that the said defendant William Dwyer do pay a fine of One Hundred

(\$100.00) Dollars, and the costs of this action taxed at ——— Dollars, and that he stand committed until said fine is paid.

And that he be imprisoned and kept at hard labor in the County Jail of ——— County of ———, Idaho, for the term of eight months, said imprisonment not to be concurrent with imprisonment adjudged this day in cause No. 616, U. S. vs. Wm. Dwyer, and it is further ordered and adjudged that there be a stay of execution on the judgment until the further order of the court preceding appeal.

[Endorsed]: In the District Court of the United States for the District of Idaho. Judgment-roll No. 615. The United States vs. William F. Kettenbach et al. Filed June 17, 1907. A. L. Richardson, Clerk.” [2634—2304]

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but object to the admission of the same in evidence, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence an affidavit in support of motion for change of place of trial in the case No. 615, hereinbefore referred to, said affidavit being signed by William F. Kettenbach, George H. Kester and William Dwyer, and the exhibits attached, which were filed in the United States District Court for the District of Idaho, Northern Division thereof, on the 19th day of November, 1909.

Said document was thereupon marked by the stenographer as Complainant’s Exhibit No. 107.

Mr. TANNAHILL.—The defendants severally

waive any further identification of the documents offered, but object to the admission of the same in evidence, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence an affidavit of George H. Kester, filed in the United States District Court for the District of Idaho, Northern Division, on the 25th day of April, in support of an application for change of venue in the case of United States of America vs. George H. Kester, and numbered 606, and the exhibits attached thereto, said affidavit being signed and sworn to by the said George H. Kester.

Said document was thereupon marked by the stenographer as Complainant's Exhibit No. 108.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document and the exhibits attached thereto offered in evidence, but object to the admission of the same in evidence, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—We offer in evidence a petition of Frank W. Kettenbach for change of venue and an affidavit made and signed by Frank W. Kettenbach, May 21, 1910, and filed in the United States [2635—2305] District Court for the District of Idaho, Northern Division thereof, and exhibit "A" attached, on the 22d day of May, 1910.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents, but object to the admission of the same in evidence, upon the ground that they are incompetent, irrele-

vant and immaterial.

It is hereby stipulated and agreed by and between counsel that any additional objections to the document last offered which counsel for the defendant Frank W. Kettenbach may see fit to make may be made at Lewiston when the taking of testimony begins at that place.

Mr. TANNAHILL.—In view of the fact that the documents which have been offered in evidence from the files of this court are original documents and a part of the records and files of the Clerk of the United States Court, and cannot be withdrawn therefrom, and the complainant having furnished and produced copies which, upon examination, are found to be true and correct copies of the original documents, it is stipulated by and between the respective parties hereto that the original documents may be withdrawn and the copies furnished and produced by the complainant may be substituted in their place and stead, with the same force and effect as if the original documents remained as exhibits in the case.

It is stipulated by and between the parties hereto that heretofore there have been indictments pending in the United States District Court for the District of Idaho, charging Ivan R. Cornell and Rowland A. Lambdin severally with offenses in violation of the federal statutes, and that said indictments against said Lambdin and Cornell were dismissed May 17, 1910, and that there are no indictments pending against the said Lambdin and the said Cornell in the United States District Court for the District of Idaho. [2636—2306]

On Tuesday, the 11th of October, 1910, at ten o'clock A. M., the hearing was resumed in the United States Land Office Contest Room, at Lewiston, Idaho.

**[Testimony of Harvey J. Steffey, for Complainant
(Recalled).]**

HARVEY J. STEFFEY, a witness heretofore called by the complainant, and duly sworn, being recalled by the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Steffey, do you know Jane Andrews?

A. I do.

Q. And do you know whether or not she is related to Martin L. Goldsmith? A. She is his daughter.

Q. And did you know a Margaret Goldsmith?

A. I did.

Q. And do you know whether or not she is related to Martin L. Goldsmith? A. She was his wife.

Q. Did you have anything to do with the location of Jane Andrews of timber and stone entry to the north half of the southeast quarter of section 21, and the west half of the southwest quarter of section 22, in township 40 north, of range 5 east, Boise meridian? A. I did.

Q. Well, now, state what you know about that claim—the entry of that claim.

Mr. TANNAHILL.—Objected to upon the ground that it is incompetent, irrelevant and immaterial, and not involved in either of the actions.

Mr. GORDON.—Answer the question, Mr. Steffey.

A. I went with them when they went up to—I went

(Testimony of Harvey J. Steffey.)

with Jane Andrews when she went up and located on the claim. [2637—2307]

Q. Now, do you know whether that was a relinquishment, and whether she had a relinquishment, and whose claim it was prior to the relinquishment?

Mr. TANNAHILL.—Just wait a minute. We object to that on the same ground, and ask that this objection go to all the evidence of the witness of a like nature, without the necessity of repeating it.

The SPECIAL EXAMINER.—Yes, that may be allowed.

Mr. GORDON.—Answer the question, Mr. Steffey.

A. It was what was called the Schnell relinquishment.

Q. The Albert D. Schnell relinquishment?

A. I think it was.

Q. Now, had Schnell a homestead on that claim prior to the relinquishment?

A. I understood he did; yes.

Q. You said it was referred to as the Schnell relinquishment. Who referred to it as that?

A. Mr. Goldsmith, and Joe Molloy, and I think Mr. Dwyer.

Q. Mr. William Dwyer? A. Yes.

Q. Now, do you know who obtained the relinquishment for Mrs. Andrews?

A. I understood that it was Joe Molloy.

Mr. TANNAHILL.—We move to strike out the answer of the witness as to what he understood, upon the ground that it is incompetent, irrelevant, imma-

(Testimony of Harvey J. Steffey.)

terial, and hearsay.

Mr. GORDON.—Q. Now, were you employed by anybody to take Mrs. Andrews to the timber?

A. Yes; I was employed by Mr. Goldsmith.

Q. Now, do you know why you were employed by Mr. Goldsmith?

(No answer.) [2638—2308]

Q. State the circumstances.

A. Well, Mr. Goldsmith asked me to go up there, and I told him that I wasn't able to go; that I was working for Mr. Dwyer and Mr. Kester; and he said he would fix that, and he—I think he asked Mr. Kester if I could go, and I believe he told him I could; and then I asked Mr. Dwyer and Mr. Dwyer told me that I should go.

Q. Now, do you know how many days this was before the relinquishment expired?

A. Well, it was a very short time. I think it was five or six—four or five or six days, something like that, before the relinquishment would expire.

Q. Now, you said something about purchasing the relinquishment. Do you know where the money came from to get the relinquishment for Mrs. Andrews?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—I understood it came from Mr. Goldsmith.

Mr. TANNAHILL.—We move to strike out the answer of the witness, as indefinite and uncertain, and what he understands is not evidence.

(Testimony of Harvey J. Steffey.)

Mr. GORDON.—Q. And all of this that you have related took place prior to the filing of Mrs. Andrews, did it not? A. Yes, sir.

Q. Were you one of Mrs. Andrews proof witnesses? A. I was.

Q. Now, do you know anything about the timber and stone claim of Margaret Goldsmith, or her entry under the timber and stone act, of the north half of the northwest quarter of section 25, and the south half of the southwest quarter of section 24, in township 38 north, or range 5 east, Boise meridian?

Mr. TANNAHILL.—Objected to on the ground that it is incompetent, irrelevant and immaterial, the entry of Margaret Goldsmith not being involved in this action; and we ask that this objection go to all the evidence [2639—2309] concerning this entry, without the necessity of repeating it.

The SPECIAL EXAMINER.—Yes, that objection may go to all that line of testimony.

Mr. GORDON.—Q. Answer the question.

A. I do.

Q. Now, what do you know about that entry, Mr. Steffey?

A. I went with them—I went with Mrs. Goldsmith to locate on the claim—to show her the claim, rather.

Q. Now, do you remember whether or not that was a homestead that had been contested or not?

A. Yes; I think that was a relinquishment that had been contested.

Q. Well, do you know whose homestead that was?

A. I think it was a man by the name of Charlie Reigler.

(Testimony of Harvey J. Steffey.)

Q. R-e-i-g-l-e-r? (Spelling the name.)

A. Something like that, yes.

Q. And do you know who had contested it?

A. I think Mr. Dwyer contested it.

Q. Well, do you know how he happened to get the relinquishment?

A. I understood he compromised with Mr. Reigler.

Mr. TANNAHILL.—We move to strike out the answer of the witness, as irrelevant and immaterial.

Mr. GORDON.—Q. From whom did you get that understanding?

A. I think from Mr. Reigler himself.

Q. Now, do you know anything about the timber and stone land entry of Jacob Blakeman, to the south half of the southeast quarter of section 14, and the north half of the northeast quarter of section 23, in township 38 north, of range 5 east?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, this entry not being involved in either of these actions; and ask that this objection go to all the evidence in relation to that entry. [2640—2310]

Mr. GORDON.—Answer the question.

A. I do.

Q. Now, did you have anything to do with the location of that entry? A. I did.

Q. Now, were you employed by anybody for that service? A. By Mr. Blakeman.

Q. And were you employed to locate Mrs. Goldsmith? I think you said you were, did you?

A. Yes, sir.

(Testimony of Harvey J. Steffey.)

Q. By whom were you employed in that capacity?

A. Well, practically by Mr. Blakeman and Mrs. Goldsmith both.

Q. Now, did Mr. Dwyer have anything to do with employing you for any service relative to those entries? A. He did.

Q. And what was that?

A. If I remember right they came in together, Mr. Dwyer and Mrs. Goldsmith and Mr. Blakeman—came in to Pierce from Greer—and he asked me to go with them on the claims.

Q. Who was that?—Mr. Dwyer?

A. Mr. Dwyer.

Q. Now, do you know whether or not the Blakeman claim, or the land which Blakeman entered, had formerly been a homestead entry of Clarence M. Hooper?

A. Yes; I understood it was the Hooper claim.

Q. Now, this employment you referred to Mr. Dwyer asking you to take them to the land, to show them the land; Mr. Dwyer located them himself, did he? A. Yes.

Q. And you showed them the land?

A. I showed them the land.

Q. And that was before either Mr. Blakeman or Mrs. Goldsmith had [2641—2311] made their timber and stone filings? A. Yes.

Q. Now, did you ever have any talk with Mr. Dwyer after that about these claims—these Goldsmith and Blakeman claims?

A. Not at that time.

(Testimony of Harvey J. Steffey.)

Q. Well, did you later? A. Yes.

Q. Now, state what that was and the circumstances surrounding it.

A. Well, it came about in regard to this Jane Andrews claim; there was some trouble with a man by the name of Hinds, from Kendrick, who contested Jane Andrews on the ground that she was not on the land, and I was in Lewiston at the time, and Mr. Dwyer was up at Deer Creek; he was one of the fire patrol at the time, and I went up and told him the circumstances, and I was afraid they had good grounds to contest her on, and incidentally I referred to the fact that Joe Molloy said he had an option on the Margaret Goldsmith and the Jake Blakeman claim, and that he was going to buy them, and Mr. Dwyer said that they couldn't sell them, because they had the same arrangement as the others.

Q. What else did he say?

A. And he didn't think there was anything to it.

Q. Did he say anything further than that that had the same arrangement that the others had? Did he say that they had to come through?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I believe he did, yes.

Mr. GORDON.—Q. Now, do you know whether or not when it came time for Jane Andrews to make proof that you had any communication with Mr. George H. Kester relative to that formality of the claim?

A. No, I don't; I don't remember that.

(Testimony of Harvey J. Steffey.)

Q. Mr. Steffey, you remember of testifying, when you were on the stand before, that you had located Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. [2642—2312] Myers and Jannie Myers, do you not? A. Yes, sir.

Q. I will ask you whether or not you ever had any arrangement with them by which they were to pay you a fee for locating them on the land, or whether or not they or anybody else ever paid you a fee for locating them on their timber claims?

Mr. TANNAHILL.—We object to that as a repetition; that has all been gone over by the witness in his examination-in-chief; and it is simply an effort to consume time and prolong the record, and it should not be permitted.

Mr. GORDON.—(To Mr. TANNAHILL.) You need not put that in, but if you will strike that out that is the only question I am going to ask him, and he can answer that yes or no.

WITNESS.—No, I didn't.

Mr. GORDON.—(To Mr. TANNAHILL.) Now, do you want to strike out part of that—that prolonging part?

Mr. TANNAHILL.—No, sir; I want that in there.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Steffey, you never took Jane Andrews or Blakeman either to their land, did you?

A. No, I didn't.

Q. Jane Andrews and Blakeman and Margaret

(Testimony of Harvey J. Steffey.)

Goldsmith sold their claims to Nat. Brown, didn't they? A. I don't know.

Q. You know that they didn't sell them to Dwyer, or Kester, or Kettenbach, don't you?

A. No, I don't know.

Q. You don't know whether they did or not?

A. I do not.

Q. Now, Dwyer told you that they owed him for the relinquishments, did he not, and the location fees, when he had this talk with you? [2643—2313]

A. Possibly he may have; I don't remember it.

Q. Now, didn't he tell you that he had arrangements with them that they were to pay him for these location fees and relinquishments when they sold their claims? A. No.

Q. But he told you that they hadn't paid him, didn't he, when you told him that they had optioned them to Joe Molloy? Didn't he tell you that they hadn't paid him the location fee and for the relinquishments? A. No.

Q. You knew that they had not paid for them, didn't you? A. No, I didn't.

Q. You didn't know anything about that?

A. No.

Q. Now, where was it that you told Dwyer about this, that they had optioned them to Joe Molloy?

A. It was at Brown's cabin, on Deer Creek.

Q. When was it?

A. Well, it was some time—I don't know exactly what month it was.

Q. How long was it after they had proved up—

(Testimony of Harvey J. Steffey.)

made their final proof?

A. It was perhaps two months.

Q. Did they both make proof at the same time?

A. They did.

Q. Did Jane Andrews make proof at the same time that Margaret Goldsmith and Blakeman made proof? A. No.

Q. Which made proof first?

A. Blakeman and Mrs. Goldsmith.

Q. How long before Jane Andrews made proof?

A. Well, it must have been two or three months, maybe more.

Q. You say Dwyer came into Pierce City with Margaret Goldsmith and [2644—2314] Joseph Blakeman?

A. I think he did. He might not; he may have been there. I know they came in together on a rig, and I am under the impression that Mr. Dwyer came with them, although it is possible he did not.

Q. Well, how did you come to testify that Dwyer came with them, on your direct examination?

A. Well, I may be mistaken, but I think he came in with them.

Q. Now, was Dwyer there at all?

A. Yes, he was there.

Q. When did he show up?

A. Well, as I say, I think he showed up with them.

Q. Dwyer was selling them the relinquishments, was he? A. I don't know whether he did or not.

Q. You understood that he was locating them?

A. Yes.

(Testimony of Harvey J. Steffey.)

Q. And you was working for Dwyer at that time?

A. Yes, sir.

Q. And you never told Dwyer you didn't take them to the land, did you? A. Oh, yes, I did.

Q. You did? A. Oh, yes.

Q. When did you tell him that?

A. I told him that the same day.

Q. And what time of day did they get to Pierce City? A. Along in the evening.

Q. And when did you start for the land?

A. The next morning.

Q. You started the next morning? A. Yes, sir.

Q. Now, who did Jane Andrews sell her claim to?

A. I don't know. All I know is what I saw in the newspaper. The [2645—2315] first transfer I saw, I think, was to Frank Kettenbach.

Q. Who was the next transfer to?

A. I never saw any others.

Q. You never saw any others? A. No.

Q. And you don't know who finally did get the claim? A. I do not.

Q. But you have no information that Kester, Kettenbach or Dwyer got it? A. I have not.

Q. And the only interest that you know of that Dwyer had in it was his location fee and the relinquishment? A. That was all.

Q. Now, you know nothing about Dwyer locating Jane Andrews, do you? A. No.

Q. And as a matter of fact Dwyer had nothing to do with the Jane Andrews claim that you know of?

A. No, I don't think he had, not that I know of.

(Testimony of Harvey J. Steffey.)

Q. Now, are you sure, Mr. Steffey, that you seen a transfer—a record of the transfer of that claim to Frank Kettenbach?

A. No, I didn't see it; I simply saw the statement in the newspaper that Frank Kettenbach had bought the claim—in the real estate transfers.

Q. In the real estate transfers? A. Yes, sir.

Q. Are you sure of that?

A. Well, I am pretty sure.

Q. Don't you know that she sold that claim to Nat. Brown, direct? A. No, I don't.

Q. You don't know anything about that?

A. No, I don't.

Q. Now, Dwyer told you to take these people to the land, did he [2646—2316] not, when you started? A. Yes.

Q. And you returned and told him that you hadn't taken them to the land, but you took them to the upper end of the quarter section, and they were satisfied?

A. No. The understanding was with Mr. Dwyer when I went out with them that I wasn't able to take them on the land that day, because it was too far to Pierce, and I took them out and brought them back in one day, which he knew was impossible, and everybody else that knows anything about it.

Q. Didn't he tell you that you ought to have taken them to the land, or they might kick on it?

A. No, sir, he didn't.

Q. Nothing of that kind? A. No, sir.

(Testimony of Harvey J. Steffey.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Steffey, were not there a great many claims that you and Mr. Dwyer located people on that you didn't show them the land?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—No. I think those two are the only ones—that I know of personally.

Q. Do you know of any claims that Mr. Dwyer located people on that he didn't show them the land?

A. Only by rumor.

Q. What did they call that expression? What was the expression of taking people out in the direction of the land, and not taking them to the land?

A. Well, between Mr. Dwyer and myself that was usually what was called “up the creeking.”

Mr. WILLIAM DWYER.—I never used the expression. I never located a person on a piece of land that I didn't show it to them. There is no [2647—2317] use of putting that kind of stuff in.

Mr. TANNAHILL.—Q. What claim did Dwyer ever attempt to locate anyone on, that he didn't show them the land; or locate them on that he didn't show them the land, that you know of?

A. I don't know of any. [2648—2318]

[Testimony of Lon E. Bishop, for Complainant.]

LON E. BISHOP, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Lon E. Bishop.)

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Bishop, where did you reside in March, 1903? A. Up North Fork.

Q. Well, North Fork of what?

A. Of the Clearwater.

Q. In what State? A. Idaho.

Q. How far is that from Lewiston?

A. About 100 miles from here.

Q. And what was your age at that time, in 1903?

A. About 23.

Q. Were you employed in March, 1903?

A. Yes, sir.

Q. By whom? A. Small & Emory.

Q. And what was Mr. Emory's name?

A. Fred Emory.

Q. And what was Small & Emory's business?

A. Logging.

Q. The lumber business? A. Yes, sir.

Q. And were you married at that time?

A. No, sir.

Q. Who located you on your timber claim?

A. Mr. Emory.

Q. And was anything said at the time you were located about a location fee? A. No, sir.

Q. I show you timber and stone lands sworn statement dated March [2649—2319] 24th, 1903, and ask you whether you signed that paper and filed it in the land office at Lewiston, Idaho, about the date it bears. A. Yes, sir.

Q. I show you the nonmineral affidavit of Lon E.

(Testimony of Lon E. Bishop.)

Bishop, bearing the same date, and ask you if you signed and filed that paper in the land office at Lewiston, Idaho. A. Yes, sir.

Q. About the same time? A. Yes, sir.

Q. I show you the testimony of Lon E. Bishop, given at the final proof, June 17th, 1903, and ask you if you signed and filed that paper. A. Yes, sir.

Q. I show you the cross-examination of Lon E. Bishop taken at the same time, and ask you if that is your signature to that paper. A. Yes, sir.

Q. Was the place of business of Small & Emory on the North Fork at the time you made your filing?

Mr. TANNAHILL.—The defendants severally object to any further evidence of the witness relative to his filing upon a timber claim, in so far as it relates to bills No. 388 and 407, upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in either of these actions.

Mr. GORDON.—Answer the question.

A. Yes, sir.

Q. And when you made your filing did you come to Lewiston alone, or did you come with someone?

A. I came down with Jim Evans.

Q. And did you see Mr. Emory down here at that time? A. Yes.

Q. And I will ask you who prepared the filing papers for you that you have identified?

A. Fred somebody—I forget him name now; he used to be over [2650—2320] there in the land office—I can't recall his name—Krutz—

Q. Krutinger? A. Krutinger.

(Testimony of Lon E. Bishop.)

Q. Well, who directed you to Krutinger's office?

A. Why, Fred, I guess; I think so.

Q. Did this James Evans you speak of, did he file at the same time that you did? A. Yes.

Q. Was he also employed by the firm of Small & Emory? A. Yes.

Q. Did Mr. Charles Smith come down at the same time that you did? A. No.

Q. Do you know whether he had located before you did, or afterwards?

A. Afterwards, I guess; I don't know.

Q. Who paid your expenses from the North Fork down to Lewiston? A. I paid my own.

Q. Did you pay Mr. Krutinger any fee for preparing your papers? A. I did.

Q. Sir?

A. I think I gave him a dollar; I don't know.

Q. Are you sure of that?

A. I gave him some money, anyhow.

Q. Do you remember the occasion of your making your final proof? A. How is that?

Q. Do you remember the occasion of making your final proof on your timber claim?

A. I don't know as I understand you.

Q. Do you remember the time that you made your final proof? A. What—the time?

Q. Yes. A. Why, it was some time in March.

Q. Well, I say, do you remember the occasion of coming down to [2651—2321] make your proof?

A. Well, yes; I made a special trip of it.

Q. And who came with you at that time?

(Testimony of Lon E. Bishop.)

A. Evans.

Q. Now, before you came did you have any arrangement with Mr. Emory as to where you were to get the money with which to make your proof?

A. No, sir.

Q. When you started from home you didn't have the money to make your proof with, did you?

A. No.

Q. And was Mr. Emory down here at that time?

A. Yes.

Q. Did you meet him when you came down to make your proof?

A. Well, he was up in his office.

Q. Here? A. Yes.

Q. And did you go there to see him? A. Yes.

Q. And how much did you value this claim at, at that time?

A. I don't know. I didn't have no price on it.

Q. Well, you remember of answering a question at the land office as to what value you put upon it, don't you?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

WITNESS.—No.

Mr. GORDON.—Q. Well, this paper, the testimony that you gave at final proof, which you have identified, I read question 12: "What is the estimated market value of the timber standing upon this land?" "Answer. \$1,000." Do you remember making that answer? A. No.

Q. I will ask you to look at the paper, which you

(Testimony of Lon E. Bishop.)

say you signed [2652—2322] and swore to, and I show you question 12, and I will ask you whether or not you were not sworn to that question.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

WITNESS.—I don't remember answering that. I don't remember it.

Mr. GORDON.—Q. Didn't you have any idea what the value of the timber was? A. No.

Q. Didn't you answer the questions that were put to you on final proof?

A. I don't remember what I did tell them.

Q. Where did you get the money with which you made your final proof? A. From Emory.

Q. From Emory? A. Yes, sir.

Q. How much did you get from Mr. Emory the day you made your proof?

A. I got—when we settled up I got the whole thing.

Q. No, but I say, how much did you get from him with which to make your proof?

A. \$400.00 is what I got.

Q. From Mr. Emory? A. Yes.

Q. And where did he give you that?

A. From Mr. Colby.

Q. Well, was Mr. Colby also in the business with Mr. Emory? A. Yes.

Q. And was that another firm? A. No.

Q. Well, what was the firm? A. Well,—

Q. You said it was Small & Emory. Now, what connection—

(Testimony of Lon E. Bishop.)

A. Well, Small & Emory, and I guess Mr. Colby was connected in [2653—2323] with them.

Q. Now, what Colby is that—C. W. Colby?

A. I don't know what his initials is.

Mr. TANNAHILL.—C. W. Colby.

Mr. GORDON. Q. And did you talk with Mr. Emory about getting the money, or with Mr. Colby?

A. Well, I spoke about that we would have to have a settlement so I could get the money to prove up with.

Q. Now, who did you talk with about that?

A. I talked with Emory about it.

Q. What did Emory say?

A. He said he would settle up with me, and he would give me the money.

Q. Now, what settlement was it you were to have?

A. Well, I was working for him, you know, and I had worked for him quite a while, you know, and he had given me money along.

Q. Now, how much actual cash did you get that day from Colby? A. Why, I got \$400.00.

Q. And how did you happen to get it from Colby? Did he owe you any money; or was it Emory that owed you the money?

A. Well, it was Emory. They were all connected together.

Q. Did you have any talk with Mr. Colby about it at all? A. No.

Q. And where did you get the money from Mr. Colby? A. Out here on the street.

Q. Whereabouts on the street?

(Testimony of Lon E. Bishop.)

A. Why, somewhere right down—somewheres out in here. (Indicating.)

Q. How far from the Lewiston National Bank?

A. Well, I couldn't say. I think it was on this side of the Lewiston National Bank. [2654—2324]

Q. In front of the bank?

A. No. I don't remember just where I met him.

Q. Well, how did you happen to meet Mr. Colby down there? Did you have an appointment to meet him? A. No.

Q. And you hadn't talked to him at all about getting any money? A. No.

Q. And did Mr. Colby come up to you and say anything about the money?

A. Why, yes; he came and gave it to me.

Q. Now, was Evans with you at that time?

A. No.

Q. And where was Evans then?

A. Why, he was around the street some place.

Q. Do you know where he got his money to prove up? A. No.

Q. And did Colby say anything to you when he gave you the money?

A. Well, he told me Fred told him to give me some money—to give me that money to prove up on.

Q. And do you remember what the denomination of the money was that he gave you? Do you remember whether it was in big bills or small bills?

A. Well, it was bills, I guess; I think it was.

Q. And it was in cash, was it?

A. Yes—cash.

(Testimony of Lon E. Bishop.)

Q. Was it an even \$400.00 that he gave you?

A. No; it was something over \$400.00 he gave me.

Q. How much over \$400.00?

A. I couldn't say. I think he gave me \$450.00.

Q. And did you go right to the land office after meeting Mr. Colby?

A. Yes, I went over to the land office.

Q. Now, did you pay that \$400.00 into the land office that Mr. [2655—2325] Colby gave you?

A. Yes, sir.

Q. Now, was anything said between you and Mr. Colby or Mr. Emory as to where you should say you got that \$400.00? Did they tell you what you should say when you were asked that question at the land office? A. No—no.

Q. And do you remember who your witnesses were at the final proof? A. Evans and Clute.

Q. Joseph B. Clute? A. Yes, sir.

Q. Did Mr. Clute also work for Small & Emory?

A. Yes.

Q. Did he come down with you at that time?

A. I think he came down before.

Q. The day before?

A. Well, I don't know. I think he came down a few days before.

Q. Did he make proof the same day you did?

A. Yes, sir.

Q. Did Evans also make proof the same day?

A. Yes.

Q. Were you a witness for both of them?

A. Yes.

(Testimony of Lon E. Bishop.)

Q. Now, the same day that you made your proof you made a deed conveying your timber claim to William F. Kettenbach and George H. Kester. Do you remember that transaction? A. Yes, sir.

Q. Well, now, who negotiated that sale?

A. I don't remember.

Q. From whom did you get the money that you realized from that land?

A. I got it at the bank. [2656—2326]

Q. The Lewiston National Bank?

A. Yes.

Q. Who gave it to you?

A. I went there to the bank and got the money.

Q. Well, but who gave it to you?

A. I think Kester, the Cashier.

Q. And did he give it to you in cash?

A. Yes.

Q. How much did he give you in cash?

A. \$650.00.

Q. \$650.00? A. Yes, sir.

Q. Was either Emory or Colby with you when he gave you that? A. No.

Q. Had you ever talked to Mr. Kester before about this? A. No.

Q. Who told you to go and see Kester?

A. Well, Emory said that he would buy.

Q. Well, did you have any talk with Mr. Kester about how much he should pay for this land, or was it just an understanding what you were to get?

A. Well, he made me this offer—he said that is all he would give me.

(Testimony of Lon E. Bishop.)

Q. And did you pay back the \$400.00 the same day that you had gotten it from Mr. Colby?

A. Well, I paid him back the amount that I borrowed from him.

Q. And did you ever pay a location fee?

A. Yes.

Q. When did you pay that?

A. I paid that about a week afterwards, I guess.

Q. Why didn't you pay it all the same day?

A. Well, I don't know; something happened that I didn't pay it. [2657—2327]

Q. And how much did you get out of this claim, clear? A. Well, it would be about \$150.00.

Q. Now, what did you say when you went in to see Mr. Kester? A. What did I say?

Q. Yes.

A. Well, when I signed the deed I turned it over and told him it was fixed up, and he gave me the money.

Q. Oh, you made out the deed to Kester and Kettenbach before you had seen Mr. Kester? A. Yes.

Q. Now, who told you to make out the deed?

A. I don't remember.

Q. Was it Mr. Emory, or Mr. Colby, or—

A. I don't remember who it was.

Q. And you had acknowledged the deed and all before you went over and saw Mr. Kester?

A. Yes.

Q. Now, who went with you to have the deed made out? A. Why, no one.

Q. Was Mr. Clute along?

(Testimony of Lon E. Bishop.)

A. He came up afterwards.

Q. To the same office? A. Yes.

Q. And was Mr. Evans in there? A. No.

Q. Was Mr. Smith? A. No.

Q. Now, were you told what you were to get for your claim before you went and seen Mr. Kester?

A. No, sir.

Q. Hadn't you any idea what you were to get for your claim before you went to see Mr. Kester?
[2658—2328] A. No.

Q. Still, you had already made out your deed, conveying the property to him; is that correct?

A. Well, when I went over there and told him that everything was fixed up he told me that when it was signed over he would give me the money.

Q. State that again.

A. When I signed the deed I went over to the bank, and he gave me the money.

Q. Now, that is the first time you had talked with Mr. Kester about this timber claim? A. Yes, sir.

Q. And you had the deed with you? As I understand, you had already signed the deed?

A. Yes, sir.

Q. And you say you hadn't any idea how much you were to get for your claim at that time.

A. I was to get \$650.00 for it.

Q. Who told you you would get that for it?

A. Kettenbach.

Q. Kettenbach told you that? A. Yes, sir.

Q. You had seen Mr. Kettenbach before that time?

(Testimony of Lon E. Bishop.)

A. Well, I seen him just when I sold,—when I sold to him; and then I went over and signed the deed and went back and got my money.

Q. From Kester?

A. Yes, sir—Kester was the cashier.

Q. Now, that is the first time I have heard of Mr. Kettenbach. That is Mr. W. F. Kettenbach you saw, was it? A. Will.

Q. Now, when did you talk with him about buying the claim?

A. Why, after I proved up. [2659—2329]

Q. Now, where did you see him?

A. In the bank.

Q. In the bank? Is that right?

A. Yes, sir.

Q. Who told you to go and see him? A. Emory.

Q. And what did Kettenbach say to you?

A. Well, he just made me this offer; he said that was the best he could do.

Q. \$650.00? A. Yes, sir.

Q. Was Kester present? A. I don't remember.

Q. Now, were you and Mr. Kettenbach alone in the bank, or did someone go there with you?

A. No; no one went with me.

Q. Then you had seen Mr. Kettenbach before you had the deed made out? A. Oh, yes.

Q. Well, who told you to put in the deed the consideration of \$1,000.00? A. I don't remember.

Q. Do you remember who drew the deed for you?

A. No, I don't.

Q. Did you pay any expense of drawing the deed?

(Testimony of Lon E. Bishop.)

A. No—they paid it.

Q. Did anybody go to the office where you had the deed prepared, with you? A. No; I went alone.

Q. Did you take any papers there with you?

A. Papers?

Q. To the lawyer's office who prepared your deed?
[2660—2330]

A. I don't remember whether I had any papers or not.

Q. Was the deed prepared when you arrived at that office? A. No.

Q. And do you know where the man who prepared the deed got the description of the property to put in it? A. No.

Q. Now, what was the transaction you had with Mr. Kester? Was Mr. Kettenbach present when Mr. Kester paid you? A. I don't remember.

Q. And did you know Mr. Kester? A. Yes.

Q. And what was the transaction? Did you just go there and hand him the deed, and then he gave you the \$650.00? A. Yes.

Q. Nothing was said to him about how much he was to give you, was there,—by you?

A. Well, Mr. Kettenbach had told him how much I was to get, I suppose.

Q. You didn't say anything to him about it, though?

A. Well, I told him what I was to get, and he said that was right.

Q. You just went in and told him that you were to get \$650.00, and you handed him the deed and he gave

(Testimony of Lon E. Bishop.)

you that money in cash? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Lon E. Bishop, dated March 24th, 1903, the nonmineral affidavit of Lon E. Bishop, the notice for publication and the proof of publication, the testimony of Lon E. Bishop given at the final proof, the cross-examination of Lon E. Bishop given at the final proof, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated June 17th, 1903, a certified copy of the patent issued to Lon E. Bishop, dated August 3d, 1903, all relating [2661—2331] to the entry of the west half of the southeast quarter and the south half of the southwest quarter of section 23, township 39 north, of range 3 east, Boise meridian; also, a certified copy of a deed dated June 17th, 1903, made by Lon E. Bishop, unmarried, conveying to William F. Kettenbach and George E. Kester the west half of the southeast quarter and the south half of the southwest quarter of section 23, township 39 north, of range 3 east, Boise meridian, executed and acknowledged by Lon E. Bishop the 17th of June, 1903, before H. K. Barnett, a Notary Public for Shoshone County, and recorded in the office of the Recorder of Shoshone County at the request of George H. Kester August 10th, 1903. I also offer in evidence a certified copy of the receiver's receipt, dated June 17th, 1903, and recorded in the office of the Recorder of Shoshone County at the request of George H. Kester,

(Testimony of Lon E. Bishop.)

August 10th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the admission of any of the papers in support of bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, and the entry of the witness is not involved in either of these actions. And the defendants severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Complainant's Exhibits 110, 110A, 110B, 110C, 110D, 110E, 110F, 110G, 110H, 110I, 110J, 110K, 110L, 110M, 110N, 110O, and 110P.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Bishop, did you have any talk with Mr. Kettenbach, or Mr. Kester, or either of them, concerning the sale of your land, before you made your final proof? A. No, sir.

Q. Did you have any talk with Mr. Colby or Mr. Emory about the sale of your land, before you made your final proof? [2662—2332] A. No, sir.

Q. When did you first conclude to make a sale of your land, in relation to the time you made your final proof? A. Well, after I proved up.

Q. After you proved up? A. Yes, sir.

Q. And who did you first talk with about the sale of your land? A. Why, Emory.

(Testimony of Lon E. Bishop.)

Q. With Mr. Emory? A. Yes, sir.

Q. And what did he tell you?

A. He told me that Kettenbach would buy.

Q. Did he tell you what he would give you for it?

A. No.

Q. And then, you had a talk with Kettenbach about it, did you? A. Yes; I went over to see him.

Q. You went over to see him? A. Yes, sir.

Q. And it was then you agreed on the price?

A. Yes.

Q. And then he told you to make out the deed?

A. Yes.

Q. And you made out the deed, and went over and had the deed made out? A. Yes, sir.

Q. And executed it, and brought it back, and gave it to Mr. Kester, who was the cashier of the bank?

A. Yes, sir.

Q. And you told him that you was to get \$650.00 for it? A. Yes.

Q. And he told you that was right?

A. Yes. [2663—2333]

Q. Now, you stated that you paid back to Mr. Emory the money that you had borrowed from him. How much money had you borrowed from him?

Q. Well, I don't remember just how much I did get from him. He owed me, and after I got this money, why, then I owed him.

Q. And I believe you said that you told him that you wanted to settle up, so that you could get the money to make your final proof with? You wanted the money to make your final proof with? A. Yes.

(Testimony of Lon E. Bishop.)

Q. And you had a settlement, did you?

A. Well, he just gave me the whole amount, you know, and then I told him that I wanted to settle up, and he just gave me the amount.

Q. Gave you the amount? A. Yes.

Q. And then when you paid him back it was determined then how much money he owed you before he let you have the \$400.00, was it?

(No answer.)

Q. That is, determined how much money you had coming to you from him? A. Yes.

Q. Before you got the \$400.00 from him?

A. Yes.

Q. And then it was also determined how much money you owed him after he let you have the \$400.00? A. Yes.

Q. And that was the money that you returned to him? A. Yes.

Q. Now, then, give us your best recollection of about how much it was?

A. I don't remember now how much it was.

Q. Was it as much as \$150.00?

A. Why, it was somewheres in the neighborhood of that.

Q. Somewheres in the neighborhood of \$150.00? [2664—2334] A. Yes.

Q. And then, some time after that, a few days or a week or so after that, you paid him the \$100.00 location fee? A. Yes.

Q. And you had no understanding or agreement with Mr. Emory that you would sell him the land,

(Testimony of Lon E. Bishop.)

before you filed on it? A. No.

Q. Or before you made your final proof?

A. No.

Q. Then the affidavit that you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir.

Q. And you had never filed on any land under that timber and stone act before? A. No, sir.

Q. And you was entitled to 160 acres of land in that way? A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Bishop, have you ever talked with Mr. Emory about your timber claim since you sold it?

A. No.

Q. Has he ever talked to you about it? A. No.

Q. Has he said anything about it at all? [2665—
2335] A. No.

Q. Did you see Mr. Emory yesterday? A. Yes.

Q. Where? A. I seen him on the streets.

Q. Did he say anything to you about the testimony

(Testimony of Lon E. Bishop.)

you were to give here to-day? A. No.

Q. Did he ask you if you had been subpoenaed down here?

A. Yes, he asked me if I had been subpoenaed down here.

Q. Was anything else said at all? A. No.

Q. Nothing was said about what you were to testify to? A. No, sir.

Q. He never asked you what you were going to testify to? A. No.

Q. When did you say it was that it was determined how much Emory and Colby owed you—or Emory & Small owed you?

A. I don't remember just how much they owed me. I think when I paid them back that I owed them about somewhere in the neighborhood of \$150.00.

Q. Now, when was it determined how much you owed them, and how much they owed you?

A. Well, it was a few days afterwards.

Q. A few days after what?

A. We settled up—had a straightening up altogether.

Q. Now, what do you mean? A few days after when? When was the settlement?

A. After I sold.

Q. When you made your final proof, you didn't know how much they owed you, did you?

A. I knew they owed me quite a bit. [2666—2336]

Q. Well, I mean it hadn't been settled between you? A. No.

[Testimony of Charles Smith, for Complainant.]

CHARLES SMITH, a witness called by the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Smith?

A. Up the Clearwater.

Q. On the North Fork of the Clearwater?

A. Yes, sir. It is section 29, 41-6 east.

Q. Well, how far is that from Lewiston?

A. It must be somewhere about a hundred miles.

Q. And did you reside at the same place in April, 1902? A. Yes, sir.

Q. By whom were you employed in April, 1902?

A. 1892?

Q. 1903, I mean.

A. I think Fred Emory; I wouldn't say for certain.

Q. And by whom were you employed at the time you took up your timber claim? A. Fred Emory.

Q. And in what capacity were you employed?

A. Logging, as near as I can remember. I don't remember exactly what we were working at at the time—logging, or driving, or something of that kind.

[2667—2337]

Q. And what were your wages?

A. Why, when we was driving we got \$3.00 a day, and when we was working in the woods I think it was \$40.00 a month, if I remember right. I don't remember what we was working at at the time, though.

Q. Now, do you know Joseph B. Clute?

(Testimony of Charles Smith.)

A. Yes, sir.

Q. What did they call him—Ben Clute?

A. Yes.

Q. Was he doing the same kind of work that you were? A. Yes.

Q. Was he also employed by Mr. Emory?

A. Yes, sir.

Q. Now, state how you happened to take up a timber claim.

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to his taking up a timber claim, in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, irrelevant and immaterial.

Mr. GORDON.—Answer the question.

The SPECIAL EXAMINER.—Read the question to him.

WITNESS.—I beg your pardon; I forget what it was.

The Reporter thereupon repeated the last question.

WITNESS.—Why, as near as I can remember, Ben Clute and I, we were going to take up homesteads and we thought if we would take a timber claim, if we could sell it, it would help us out on holding our homesteads—give us money to hold our homesteads. That was Ben Clute and I.

Mr. GORDON.—Q. Well, now, what else happened? Did you talk with anybody about that?

A. Why, nobody but Ben and I; and then we spoke to Fred Emory about locating us. [2668—2338]

(Testimony of Charles Smith.)

Q. Well, now, what did you have to say to Emory?

A. Well, we asked him if he could locate us on a claim, and he said he thought he could, and so he finally did locate us.

Q. What else did Emory say? A. How?

Q. What else did Emory say?

A. Why, I don't just understand—

Q. Did he say anything else to you except that he could? Was that all that was said?

A. Why, it was all that was said at that time when we first spoke to him; and then we asked him if he would locate us, and he said he would; and so—Oh, it was going on to probably a month during that time from the first time we spoke about it, and he said he would back us up for to get a claim, and he located us.

Q. Now, how do you mean he would back you up? What do you mean by “backing you up”?

A. Well, we really didn't have money enough of our own; at least, I don't think I had; I don't know what was coming to me at the time. We had been—I was to work there, and we would draw money whenever we wanted it, whether it was coming to us or whether it wasn't.

Q. You were married at that time? A. No, sir.

Q. Now, did he tell you he would back you, or whatever your expression was, before you went up to locate?

A. Well, I don't remember whether it was before we went up to locate, or after.

Q. Well, was it before you filed that he told you that?

(Testimony of Charles Smith.)

A. Yes, sir; as near as I can remember, it was.

Q. Now, who came with you when you came down to make your filing? A. Well,—

Q. Did you come alone?

A. No, I don't think so, as near as I can remember, but I couldn't [2669—2339] state exactly who it was came with me.

Q. Did Jim Evans come with you?

A. I don't remember.

Q. Was Jim Evans working up there at Mr. Emory's at the same time you were?

A. Yes, I think he was. Yes, he was working there all the time.

Q. And do you remember whether Clute came with you?

A. I am pretty certain that Ben did. I think Ben and I came together, as near as I can remember.

Q. Well, was Ben with you when you had your talk with Mr. Emory about locating you on claims?

A. Why, he was when we first spoke about it, I think.

Q. And who paid your expenses of coming from the Clearwater down to Lewiston?

A. I paid them myself.

Q. Where did you get the money?

A. Well, the money I had that I had drawn—wages.

Q. Did you draw it just before you came?

A. Well, I couldn't say as to that.

Q. Sir?

A. I couldn't say for certain whether I did or not.

(Testimony of Charles Smith.)

I never drewed any until I came down here, you know. This was where we always drewed our money, in Lewiston.

Q. Well, the first time you came did you draw any money? A. I don't know.

Q. I show you timber and stone lands sworn statement of Charles Smith, dated April 2d, 1903, and ask you if you signed that paper and filed it in the land office at Lewiston about the date it bears.

A. It looks like my writing all right. It must be.

Q. I show you the nonmineral affidavit of Charles Smith, of the same date, and ask you if you signed and filed that paper.

A. I think so. That looks like my signature. I guess it is. [2670—2340]

Q. I show you the testimony of Charles Smith, given at the final proof at the land office, June 23d, 1903, and ask you if you signed that paper.

A. I think that is my signature, too. It looks like it all right.

Q. I show you the cross-examination of Charles Smith given at the final proof the 23d day of June, 1903. Did you sign that paper?

A. Yes, sir—as near as I can tell by the looks of the writing.

Q. Now, who prepared that sworn statement for you—the first paper that you have identified here?

A. In the land office?

Q. The first paper you filed in the land office.

A. Why, I couldn't say who it was. They were all strangers to me in the land office.

(Testimony of Charles Smith.)

Q. Now, who went to the land office with you?

A. Why, I don't remember now who it was.

Q. Didn't Fred Emory go there with you?

A. Yes; I think Fred was a witness for me.

Q. I mean the first time you went there, before you had any witnesses. A. Oh.

Q. Didn't he go with you the first time you went?

A. I couldn't say for certain. I don't remember.

Q. Who named the witnesses for you on that occasion, that you put in the notice for publication?

A. I can't remember that, either.

Q. Do you know how much fee you paid in the land office the first time you went there?

A. No, I don't. I don't remember the amount.

Q. Did you pay anybody anything for preparing any papers for you that you filed?

A. I think I did pay the land office. [2671—2341]

Q. For preparing your papers?

A. No—I don't know—well, I don't know.

Q. Take your hand from your mouth and we can hear you a little better. Did you go to any lawyer's office to have any of the papers made out for you the first time you were down here, before going to the land office? A. No, sir, I don't think so.

Q. Did Clute go to the land office and file at the same time that you did?

A. Yes, as near as I can remember he did.

Q. Had he come down from the Clearwater with you?

(Testimony of Charles Smith.)

A. I think so. I think we came together, if I remember.

Q. Who notified you of the time you were to make your final proof?

A. I think Mr. West—J. B. West, wasn't it? I don't remember.

Q. How did he notify you? (No answer.)

Q. Do you remember how he notified you?

A. I think it was J. B. West.

Q. Well, how did he notify you?

A. Oh—by letter, I think it was, as near as I can remember.

Q. Do you have any distinct recollection of whether he notified you or not?

A. No, I haven't.

Q. Then, why do you think that he notified you?

A. Well, that would be supposed to be his business to notify me, wouldn't it? I don't know.

Q. And did you ever go over this land that you located on? A. Yes, sir.

Q. Who went over it with you?

A. Why, Fred Emory, when he located me.
[2672—2342]

Q. Did Emory take you out to locate you on it?

A. Yes, sir.

Q. How far was it from where you were working?

A. Oh, a couple of miles, I guess, as near as I can remember.

Q. And what section were you working in, and what township?

A. Why, we was working there in the same town-

(Testimony of Charles Smith.)

ship, as near as I can remember, on that Big Island, and that claim is about two mile above there.

Q. Now, had you any talk with Mr. Emory between the first time that you spoke with him about taking up the claim that you have related, and the time you made your final proof, as to where you were to get your money to make your proof?

A. Why, I asked him if he would let me have money enough to pay for the claim if I didn't have wages enough coming to me, I asked him if he would let me have enough more, and he said he would.

Q. And when was that?

A. Why, I don't just remember; some time after I filed.

Q. Well, hadn't he told you before you filed that he would let you have the money?

A. I don't think so.

Q. When was it that he told you that he would back you up?

A. Well, I think that was after I filed.

Q. I thought I understood you to say that was the time you spoke to him before you came down here to file?

A. Well, that is when he located me.

Q. What do you mean, when he located you?

A. Well, that—we are both muddled up, I guess. I didn't understand your question.

Q. Now, when was the time he told you he would back you up?

A. Well, that is what I say. I think it was after I had filed, as near as I can remember.

(Testimony of Charles Smith.)

Q. Now, what was the occasion of his telling you that?

A. Well, because I asked him. [2673—2343]

Q. Now, didn't you know when you filed that you didn't have the money with which to make final proof?

A. I don't think I had enough money of my own.

Q. And you wanted the money that you were to make—

A. No, sir; I wanted to get enough more.

Q. — out of that, to help you to make a homestead; is that correct?

A. Yes, and I wanted to get enough out of that in order that I could hold my homestead, to keep me going.

Q. And did you know how much it would cost you to prove up on one of these claims?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. When did you learn that?

A. I don't know just when I found that out. Most everybody knows that that knows anything about stone and timber.

Q. And how much money did you have when you made your filing?

A. I couldn't tell.

Q. Did you have \$50.00?

A. Yes, I had that much, I must have had.

Q. Now, how do you know you had \$50.00? Did you have any in your pockets?

A. Oh, yes, I must have had some in my pockets. I don't just remember.

Q. Did you have any bank account?

A. No.

Q. And how often were you paid by Mr. Emory?

(Testimony of Charles Smith.)

A. Well, whenever I would draw.

Q. About how often would you draw?

A. Oh, whenever I would come to town.

Q. How often would you come to town? [2674—
2344]

A. Oh, two or three months—three or four months—something like that.

Q. How long had it been since you had been to town before you filed? A. Oh, well—

Q. Where did you get your money with which you made your final proof?

A. I got it from Fred, as near as I can remember.

Q. From who?

A. I got it from Fred, as near as I can remember.

Q. Fred Emory? A. Yes, sir.

Q. Now, where did you get it from?

A. I don't know just where—you mean the place where I got it?

Q. Yes—the place?

A. I don't remember where it was.

Q. Did you meet him at the Lewiston National Bank and get it?

A. That is what I say, I don't remember whether it was at his own office or at the bank, or I don't remember where it was.

Q. Do you remember of going up to the Lewiston National Bank with him? A. I do not.

Q. What's that? A. No, I don't.

Q. Do you remember of going to the land office to make your proof? A. Yes, I can remember that.

Q. Who went with you there?

(Testimony of Charles Smith.)

A. Why, I think Fred went with me, and I think—oh, Charlie Dent—

Q. Yes, and who else? [2675—2345]

A. I don't remember who else.

Q. Now, when was it you had the talk about getting the money to make proof?

A. Well, that was some time between the time I filed and proving up, I don't remember what time.

Q. Now, what was said about it?

A. Well, there wasn't any more said than I asked Fred if he would let me have the money, enough to prove up on it, and he said he would if he could, but he was a little short at the time, if I can remember, but he said he would if he could. He said, if I remember right now, that he would if he could make out; he was a little short of money himself at the time.

Q. Now, the land office at the time you made proof was in the Lewiston National Bank building, was it not? A. Yes.

Q. Up on the second floor over the bank?

A. Yes, sir.

Q. Now, didn't Emory go down there with you to the land office that day? A. I think he did.

Q. And do you remember whether or not he stopped in the bank and got the money for you to make proof? A. I couldn't remember.

Q. Do you remember how much money he gave you that day?

A. No, I don't remember that, either.

(Testimony of Charles Smith.)

Q. Do you remember how much it cost you to prove up?

A. Yes; it cost me \$411.00, I think it is, or something like that.

Q. Now, didn't he give you the \$411.00 just before you went to the land office?

A. I don't remember that, either.

Q. You have no recollection at all about it?
[2676—2346]

A. Why, in a way I have a recollection of getting it, but not exactly where I got it, or just where I got it.

Q. Well, you got four hundred and some odd dollars that day to make your proof, did you not?

A. Yes, sir, I think that was it.

Q. And you don't know whether you got it from Emory or not?

A. Oh, I am pretty sure I must have got it from Emory.

Q. Did you get it from Emory, or did you get it from Colby?

A. Well, there you have got me again. I couldn't say whether I got it from Emory or Colby. Of course, it was Emory's money, that I know; it must have been, because Colby was Emory's bookkeeper.

Q. Yes, Colby was Emory's bookkeeper?

A. Yes, sir.

Q. And now haven't you any recollection whatever as to where you got that money?

A. No, I haven't—the exact place I got it I don't remember.

(Testimony of Charles Smith.)

Q. You remember being in Emory's office with Emory that morning, don't you?

A. Well, I don't know whether I was up there that morning or not.

Q. Well, where did you meet Emory when he was your witness for final proof?

A. I couldn't tell you that, either.

Q. And how much money did you get that day with which to make your proof?

A. I don't remember whether I drew any money over the bare amount it took to make final proof or not.

Q. Now, you say you were not at Emory's office that day. A. I don't know if I was or not.

Q. You had no settlement that day with him as to what he owed you, did you? A. No, sir.

Q. Sir? [2677—2347] A. No, sir.

Q. And had you been to Lewiston between the time you made your original filing and your final proof?

A. I don't think so. I might have been. I don't know whether I was or not.

Q. Well, you hadn't drawn any money between those times, had you? A. I don't think so.

Q. So your best recollection is that Emory gave you the \$412.00, at least, that you paid into the land office that day; is that correct?

A. Either Emory or Colby, I wouldn't say which it was.

Q. Well, it was whichever one you did the business with? A. Yes.

(Testimony of Charles Smith.)

Q. Now, did they know that you were coming down to make proof? A. Yes.

Q. How did they know that?

A. Well, I had got Fred to witness for me.

Q. Well, did you notify him, or don't you have any recollection of it? A. No, I don't remember.

Q. But you remember, though, being at the land office with Clute and Dent and Emory when you made your proof? A. Yes.

Q. Now, did you make that in the morning or in the afternoon?

A. I couldn't remember that; I think it was in the morning, though.

Q. And how long after you made your proof did you sell? A. That day, I think.

Q. Well, didn't you come right from the land office and go right into the Lewiston National Bank and sell the same day? A. No.

Q. Sir?

A. No. I wasn't in the bank— [2678—2348]

Q. You were not in the bank?

A. Oh, yes, I was in the bank that day, I think. I was in the bank the day I sold; I remember that.

Q. Now, who negotiated the sale for you?

Mr. TANNAHILL.—He don't understand that word, Mr. Gordon.

Mr. GORDON.—Q. Who conducted the sale for you?

The SPECIAL EXAMINER.—That is, he means who made it?

Mr. GORDON.—Q. Who made the sale for you?

(Testimony of Charles Smith.)

A. Fred.

Q. Now, where did he make it?

A. I don't know what building it was in. It was up on this side of the street here somewhere.

Q. Now, state what happened after you made your proof relative to the sale. You may just state what happened. A. Well, after I sold it?

Q. No, but before you sold it. Had you an agreement to sell it before then? A. No.

Q. Not a word was ever said about selling?

A. No. There was no previous agreement. Is that what you mean?

Q. Well, call it an agreement, or any talk about selling? A. No, there wasn't.

Q. Never a word? A. No.

Q. And who first said anything about selling it?

A. Why, Ben and I—Ben Clute and I talked over about selling it.

Q. And when was that? Just after you made your proof? A. Yes. [2679—2349]

Q. Now, where was this talk—in the land office?

A. I don't remember where it was.

Q. Now, did you all three come out of the land office together? A. I don't remember that.

Q. And do you remember what was said relative to selling the land? A. No, I don't.

Q. Do you remember where you met Emory to talk to him about selling it? A. No, I don't.

Q. Do you remember what he said to you about selling it?

A. Why, he told me that there was some man—

(Testimony of Charles Smith.)

some Eastern man that was buying land here, and he thought he could sell it to him.

Q. When was that he told you that?

A. Well, it was after—that same day, if I remember.

Q. Well, go on. What else was said?

A. And then he didn't show up, or something, I don't know what was the—

Q. Who didn't show up—the Eastern man?

A. Yes.

Q. Yes?

A. And then he said he thought maybe he could sell it to—oh—

Q. Kester or Kettenbach? A. Yes.

Q. Well, now, where did this conversation take place? A. I don't remember that, either.

Q. Was it in the land office?

A. No, I don't think so.

Q. Was it in the hall just outside of the land office?

A. No, I don't believe it was there, either; I believe it was on the street or somewhere—it might have been in the land office.

Q. Was it on the street right near the Lewiston National Bank? [2680—2350]

A. Well, I couldn't say. I don't remember.

Q. Now, wasn't that just after you made your proof, before you had separated?

A. Well, sir, I couldn't tell you. It is so long ago that I can't keep track of them things.

Q. Where did you wait while Emory went off to

(Testimony of Charles Smith.)

sell this land?

A. I don't remember that, either.

Q. And where did you go to make your deed?

A. We went up in an office on this side of the street down there somewhere.

Q. How far from the bank?

A. I don't remember. It wasn't very far, I don't think.

Q. Half a block? A. I don't know.

Q. Now, who went up there to that office with you?

A. Ben, I think it was—Ben Clute.

Q. And who else?

A. Nobody that I remember.

Q. Now, how did you happen to go to that office?

A. Well, Fred told me to go up there.

Q. And do you know whose office it was?

A. No, I don't.

Q. Did Fred Emory go with you?

A. No, I don't think Fred went up with me.

Q. Now, when you went up there was the deed made out? A. I don't remember that, either.

Q. Did you pay anything for having the deed made out? A. I don't remember.

Q. And did you talk with Kester and Kettenbach before the deed was made out? A. No, sir.

Q. And how much were you to get for this land?
[2681—2351]

A. I was to get \$650.00 I think it was.

Q. \$600.00, or \$650.00? A. Six hundred and—

Q. How much?

(Testimony of Charles Smith.)

A. \$650.00 I think it was—as near as I can remember.

Q. Now,—

A. I think that's what it was.

Q. Now, how long was that after you made your proof—an hour, or half an hour, or how long?

A. Well, it must have been longer than that. It was that same day, if I remember right, but I don't remember just how long.

Q. Well, now, where did you get your money that you received for this land?

A. I got it from the bank.

Q. The same day? A. I think so, yes.

Q. And how did you get the money?

A. Well, I believe they gave me—as near as I remember they gave me a check, and I went to the bank—

Q. Who gave you a check?

A. Well, I don't know the man, who he was; he was a stranger to me.

Q. Well, did you go into the bank when they gave you a check?

A. No. They gave me a check up where the—up in that office there on this side of the street.

Q. And whose check was it?

A. Why, it was Kettenbach's, I think, if I can remember right the bank that the check was given on.

Q. And you went over to the Lewiston National Bank the same day and got it cashed?

A. I think it was.

Q. Now, did you know Mr. Kester or Mr. Ketten-

(Testimony of Charles Smith.)

bach? [2682—2352] A. Not personally, no.

Q. Did you see either of them that day?

A. I don't know. I might have.

Q. And did you say it was either Mr. Kettenbach's or Mr. Kester's check?

A. Why, yes, it must have— I don't remember now who the check was made out on.

Q. Well, was it Fred Emory's check?

A. No, I don't think it was Fred's check.

Q. And you took that over to the bank, and how much money did they give you on the check?

A. I think they gave me \$600.00, as near as I can remember. I don't remember now what the amount was.

Q. And then how much money did you pay back to Fred Emory?

A. Well, I paid him what he had advanced me for to buy the claim.

Q. Well, now, how much was that?

A. Well, I don't just remember now how much it was.

Q. Well, as near as you can remember?

A. \$200.00, or something like that.

Q. How much?

A. A couple of hundred dollars, as near as I can remember, that I paid him back.

Q. Well, when did you pay that back?

A. Well, shortly after I drewed this money out of the bank.

Q. Was it the same day? A. I think so.

Q. And did you go back to the office and have a

(Testimony of Charles Smith.)

settlement? A. No.

Q. Well, he had given you four hundred and some odd dollars that morning, though, hadn't he?

A. Yes, sir.

Q. And you say you hadn't had any settlement?
[2683—2353] A. No.

Q. And now did you give him the four hundred and some odd dollars back, or—

Q. I don't remember whether I gave him the whole four back, or part of it.

Q. Now, did you pay a location fee?

A. Pay Fred. for locating me?

Q. Yes. A. Yes.

Q. When did you pay that?

A. Well, you see, I was working for him, and whenever I wanted money I would draw it.

Q. I know; but didn't you give him the hundred dollars out of this \$600.00 that you got?

A. Oh, yes. Yes, sir.

Q. That is, after you sold it you gave him the hundred dollars; is that correct?

A. Yes, I was supposed to give him a location fee—\$100.00 for a location fee.

Q. Well, when you say "supposed to," did you do it? A. Yes, sir.

Q. And when did you give him that?

A. Well, at that time I drawed my money.

Q. At the time you drawed your money? From where did you draw your money?

A. Out of the bank.

Q. The same day? A. Yes, sir.

(Testimony of Charles Smith.)

Q. And how much did you make out of this claim?

A. Oh, I didn't make very much.

Q. \$50.00, or \$75.00?

A. Oh, more than that, I guess. I don't remember how much I [2684—2354] did make.

Q. Well, if it cost you \$400.00 to prove up, and \$100.00 for a location fee, that is \$500.00; and then you had some expenses, and you say you only got \$600.00. A. \$650.00, I believe.

Q. I understood you to say when you went to the bank that they only gave you \$600.00?

A. I say I didn't remember how much.

Q. You don't remember whether it was \$600.00 or \$650.00? A. No, I think it was \$650.00, though.

Q. Now, in the settlement you had with Emory, your wages were not considered at all in that, were they?

A. Why, my wages were considered as backing for Fred lending me that money.

Q. Well, no, but I mean when you settled with him for the money he had advanced you, was what was coming to you considered at all? A. No.

Q. You understood that you sold this land that you were selling to Kester and Kettenbach, did you, Mr. Smith? A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Charles Smith, the nonmineral affidavit of Charles Smith, the testimony of Charles Smith given at the final proof, the cross-examination of Charles Smith, the testimony of the witnesses at final proof, and the cross-exam-

(Testimony of Charles Smith.)

ination of them, all of which papers have been identified by the witness, the receiver's receipt and the register's certificate, dated June 23d, 1903, a certified copy of the patent issued to Charles Smith, and dated August 3d, 1904, all relating to the entry of the northwest quarter of the southwest quarter of section 14, and the southeast quarter of the northeast quarter, and the north half of the southeast quarter of section 15, township 39 north, of range 3 east, Boise meridian; also a certified copy of said receiver's receipt, recorded in the office of the Recorder of Shoshone [2685—2355] County at the request of George H. Kester August 10th, 1903; also a certified copy of the deed made and executed by Charles Smith, dated June 23d, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the northwest quarter of the southwest quarter of section 14, and the southeast quarter of the northeast quarter, and the north half of the southeast quarter of section 15, township 39 north, of range 3 east, Boise meridian, acknowledged before H. K. Barnett, a Notary Public for Nez Perce County, recorded in the office of the Recorder of Shoshone County August 10th, 1903, at the request of George H. Kester.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any thereof in evidence in support of bills No. 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions, and they are irrelevant and imma-

(Testimony of Charles Smith.)

terial. And the defendants severally object to the admission of any of the final proof papers in evidence in support of either of the actions, upon the ground that they are incompetent, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Complainant's Exhibits 111, 111A, 111B, 111C, 111D, 111E, 111F, 111G, 111H, 111-I, 111J, 111K, 111L, 111M, 111N, and 111O.

Mr. GORDON.—Q. Do you remember, Mr. Smith, when you went to the land office to make your final proof that they asked you what the value of the timber was on that claim?

A. I don't remember if they did.

Q. And do you remember that you said \$2,000.00 or \$2,500.00? A. I don't remember it.

Q. Well, weren't you examined there by Mr. West?

A. Yes, I must have been, but it is so long ago I don't remember.

Q. Don't you remember his asking you a certain number of questions? [2686—2356]

A. I don't remember the things he asked me. I can't remember. That is away back, you know.

Mr. TANNAHILL.—Allow us an objection, on the ground that it is irrelevant and immaterial.

Mr. GORDON.—Q. Well, you don't think he would have put down an answer that you didn't give him, do you?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, I don't think so.

(Testimony of Charles Smith.)

Mr. GORDON.—Q. Well, do you remember this question being asked you: “Question 12. What is the estimated market value of the timber standing on this land?” and that you answered \$2,000.00 or \$2,500.00?

A. Well, I might have made it, but I don’t remember about it now. Of course, I must have made it if it is there.

Q. Now, when the money was given you to make final proof, was anything said by Mr. Emory as to where you should say you had gotten that money?

Mr. TANNAHILL.—Objected to as irrelevant and immaterial.

Mr. GORDON.—Q. Answer the question.

A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. As I understand you, Mr. Smith, there was no understanding or agreement between you and Mr. Emory or Mr. Colby, or anyone, that you should sell your land, before you filed on it? A. No, sir.

Q. And no understanding or agreement that you should sell your land, before you made your final proof? A. No, sir.

Q. And you had no talk with Mr. Kester or Mr. Kettenbach [2687—2357] regarding the sale of your land, before you filed on it, or before you made your final proof? A. No, sir.

Q. And you concluded to sell your land after you made your final proof? A. Yes, sir.

Q. Then, the affidavit that you made at the time

(Testimony of Charles Smith.)

you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," was true at the time you made it, was it? A. Yes, sir.

Q. And at the time you made your final proof?

A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. You never had filed on a timber claim before, had you? A. No, sir.

Q. And you was entitled to acquire 160 acres of land under the timber and stone act at the time you made your filing? A. Yes, sir.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [2688—2358]

At ten o'clock A. M. Wednesday, October 12, 1910, the hearing was resumed, at which time a recess was taken until one o'clock, P. M.

At one o'clock P. M. the taking of testimony was resumed, and the following proceedings were had, to wit:

**[Stipulation in re Entries of John W. Killinger
et al.]**

Mr. GORDON.—We offer the timber and stone

land sworn statement of John W. Killinger, dated February 24, 1903, the nonmineral affidavit of John W. Killinger of the same date, the testimony of John W. Killinger, given at final proof, dated May 22, 1903, the cross-examination of John W. Killinger at final proof, dated May 22, 1903, the testimony of the other witnesses at final proof, on the entry of John W. Killinger, the notice of publication, dated February 24, 1903, the receiver's receipt and the register's certificate, dated May 22, 1903, certified copy of patent issued to John W. Killinger, dated August 3, 1904, all relating to the entry of John W. Killinger of the north half of the southwest quarter and the north half of the southeast quarter of section 13, township 39 north of range 2 east of Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any thereof in evidence in so far as they relate to bills No. 388 or 407, upon the ground and for the reason that they are incompetent, irrelevant and immaterial, the entry of the witness not being involved in either of those actions; and the defendants further severally object to the admission of any of the final proof papers in evidence in support of either of the actions, on the ground that they are incompetent, irrelevant and immaterial. [2689—2359]

Said above mentioned documents were thereupon marked by the Reporter as Complainant's Exhibits No. 112, 112A, 112B, 112C, 112D, 112E, 112F, 112G, 112H, 112I, 112J, 112K, 112L, and 112M.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of George W. Har-

rington, dated November 21, 1902, the nonmineral affidavit of George W. Harrington, dated November 21, 1902, the testimony of George W. Harrington, given at final proof, February 11, 1903, the cross-examination of George W. Harrington at final proof, dated February 11, 1903, the testimony of the other final proof witnesses, and the cross-examination of them at the final proof of the entry of George W. Harrington, the notice for publication, dated November 21, 1902, the receiver's receipt and the register's certificate, dated February 11, 1903, certified copy of patent issued to George W. Harrington, dated July 2, 1904, all relating to the entry of George W. Harrington to the west half of the northwest quarter and the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section 10, in township 36 north of range 5 east, Boise meridian.

Said above mentioned documents were thereupon marked by the Reporter as Complainant's Exhibits No. 113, 113A, 113B, 113C, 113D, 113E, 113F, 113G, 113H, 113I, 113J, 113K, 113L, 113M, and 113N.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any thereof in evidence in so far as they relate to Bills No. 388 or 407, upon the ground that the entry of the witness is not involved in either of these actions, and is irrelevant and immaterial; and the defendants further severally object to the admission of the final proof papers in evidence in support of either of the actions upon the ground that they are incompetent, irrelevant and immaterial. [2690—2360]

[**Testimony of Thomas H. Bartlett, for
Complainant.**]

THOMAS H. BARTLETT, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Bartlett, what official position do you now hold?

A. Register of the land office at Lewiston.

Q. How long have you held such position?

A. Since January 5, 1906.

Q. Have you with you the record of your office showing what is known as the scrip selections, or scrip filings? A. Yes, I have it before me.

Q. I will ask you to turn to scrip selection No. 166, and state what the records show there as to the selection, and by whom it was made.

Mr. TANNAHILL.—We object to it on the ground that it is irrelevant, incompetent and immaterial.

A. On page 34 of the scrip-book, No. 166, reads: Entry made October 20, 1903, George H. Kester, Lewiston, Idaho, for the southeast quarter of the northeast quarter of section 30, township 36 north, range 4 east, in lieu of the southeast quarter of the northeast quarter of section 16, 5 north, 31 west, Santa Ynez. I said entry made, but I mean to say that was the scrip filing merely.

Mr. GORDON.—Q. Anything further shown relative to that scrip filing?

A. Nothing here, sir.

(Testimony of Thomas H. Bartlett.)

Q. Now, look at selection No. 167.

A. Number 167 was filed November 6, 1903, by William F. Kettenbach.

Q. Of Lewiston, Idaho?

A. Of Lewiston, Idaho, for the northeast quarter of the northwest quarter of section 35, township 36 north, range 4 east. Do you care for the lieu land?

Q. No, not necessarily. [2691—2361]

A. That also has a number attached to it, 03425. I will say what that means, if you desire.

Q. I don't care, other than to show what scrip selections were made. Now, will you look at No. 168, selection?

A. No. 168 was filed November 6, 1903, by William F. Kettenbach, of Lewiston, Idaho, for the southwest quarter of the southeast quarter of section 27, township 36 north, range 4 east.

Q. How many acres do each of these selections contain that you have read?

A. The first one contains forty acres—forty acres each.

Q. What does selection 175 show?

A. Number 175 was filed January 14, 1904, the selector being Auguste Ferrier and Mary Ferrier, by George H. Kester, of Lewiston, for the southwest quarter of the southeast quarter and the south half of the southwest quarter and the northwest quarter of the southwest quarter of section 27, township 36 north, range 5 east.

Q. Now, what do the scrip selections from 190 to 199 inclusive show?

(Testimony of Thomas H. Bartlett.)

A. 190 was filed July 20, 1904, by W. F. Kettenbach, selector, at Lewiston, for the south half of the northeast quarter, southwest quarter of the southeast quarter, southwest quarter of the northwest quarter, section 9, township 39 north, range 4 east.

191, on July 20th, by the same person, northeast quarter of the northeast quarter, section 20, township 39, 4 east.

192, same date, by the same person, northwest quarter of the southwest quarter, section 20, township 39, 4 east.

193, same date, same person, south half of the northwest quarter, south half of the southwest quarter, section 21, township 39, 4 east.

194, same date, same person, for the northeast quarter of the northwest quarter section 21, township 39, range 4 east.

No. 195, was filed on May 7th—

Q. May 7th or 27th? [2692—2362]

A. May 7th, it says here.

Q. What year?

A. 1904, by W. F. Kettenbach, of Lewiston, for the west half of the southwest quarter, northeast quarter of the southwest quarter of section 5, northwest quarter of the northwest quarter of section 8, township 39 north, range 5 east.

196, filed September 26, 1904, W. F. Kettenbach, for the southwest quarter of the northwest quarter of section 27, northeast quarter of the southeast quarter of section 19, township 39 north, range 5 east, and the south half of the southwest quarter

(Testimony of Thomas H. Bartlett.)

of section 15, township 38 north, range 5 east.

No. 197, filed September 26, 1904, the selector being Patrick Lavell, by W. F. Kettenbach, for the northeast quarter of the southwest quarter of section 28, township 39 north, range 5 east.

No. 198, filed October 12, 1904, the selector being Auguste Ferrier and Mary Ferrier, by W. F. Kettenbach, for the southeast quarter of the southeast quarter of section 19, the northwest quarter of the northwest quarter of section 27, township 39 north, range 5 east.

No. 199, filed September 26, 1904, by W. F. Kettenbach, for the northeast quarter of section 28, township 39 north, range 5 east.

Q. Now, will you look at selections 261 to 266, inclusive, and state what is shown by them.

A. No. 261 was filed January 5, 1906, the selector being S. P. Rolander, by George H. Kester, assignee, of Lewiston, Idaho, northeast quarter of the southeast quarter of section 29, northwest quarter of the northwest quarter of section 32, township 39 north, range 4 east.

No. 262, filed same date, by George H. Kester, assignee, of Matilda C. Young, widow of Alfred Young, for the north half of the southeast quarter of section 5, township 38 north, range 5 east.

No. 263, January 15, 1906, George H. Kester, assignee of Burditt A. Clifton, lot 11, section 30, and lot 1, section 31, township 39 north, [2693—2363] range 4 east.

No. 264, under date 7-1, meaning, I suppose, July

(Testimony of Thomas H. Bartlett.)

1, 1905, George H. Kester, assignee of Eli Haynes, west half of the southeast quarter of section 6, township 38 north, range 5 east.

No. 265, July 1, 1905, George H. Kester, assignee of Thomas J. Bayles, the north half of the northwest quarter of section 17, township 38 north, range 6 east.

No. 266, August 26, 1905, George H. Kester, assignee of William F. Caranass, for the west half of the northwest quarter of section 8, township 38 north, range 5 east.

Mr. GORDON.—That is all, Mr. Bartlett.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—It is hereby stipulated by and between the parties hereto, in open court, that Michael D. Glover made application to enter a timber and stone claim at the United States land office at Lewiston, Idaho, May 23, 1904, No. 1368, for lots 3, 4, south half of the northwest quarter section 4, township 38 north, range 5 east, Boise meridian; that he made final proof upon the same, and that the receiver's receipt and register's certificate were issued August 15, 1904; that Michael D. Glover and Nellie M. Glover, his wife, by deed dated December 12, 1905, conveyed to William F. Kettenbach said last above described property, said deed being recorded December 12, 1905, in the office of the recorder of Nez Perce County, Idaho, in Book 85, at page 144, at the request of George H. Kester.

Mr. TANNAHILL.—The defendants severally object to the evidence on the ground that it is incom-

petent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that Trula Keener made application to enter a timber and stone claim at the Lewiston land office November 13, 1905, No. 1745, for the southeast quarter of section 25, township 38 north, [2694—2364] range 5 east, Boise meridian; that she made final proof upon the same, and that the receiver's receipt and the register's certificate were issued February 9, 1906; that Trula Keener, by deed dated March 30, 1906, conveyed to George H. Kester and William F. Kettenbach said last above described property, said deed being recorded in the office of the recorder of Nez Perce County, Idaho, in Book 84, page 594.

Mr. TANNAHILL.—The defendants severally object to the evidence on the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that Winnifred M. Lane made application to enter a timber and stone claim at the Lewiston land office July 13, 1904, No. 1453, for the northeast quarter of section 21, township 38 north, range 5 east, Boise meridian; that she made final proof upon the same, and that the receiver's receipt and the register's certificate were issued October 1, 1904; that Winnifred M. Lane, by deed dated December 26, 1904, conveyed to Kittie E. Dwyer said last above described property,

said deed being recorded in the office of the recorder of Nez Perce County, Idaho, December 30, 1904, in Book 80, page 84.

Mr. TANNAHILL.—The defendants severally object to the evidence on the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is hereby further stipulated by and between the parties hereto, in open court, that George Dagnall made application to enter a timber and stone claim at the Lewiston land office July 16, 1905, No. 1592, for the west half of the southeast quarter, east half of the southwest quarter of section 20, township 39 north, range 5 east, Boise meridian; that he made final proof upon the same, and that the receiver's receipt and register's certificate were issued July 1, 1907; that George Dagnall, by deed dated October 4, 1907, conveyed to Kittie E. Dwyer said last above described property, said deed being recorded in [2695—2365] Book 98, at page 12, in the office of the recorder of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally object to the evidence on the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that Joseph W. Lane made application to enter a timber and stone claim at the United States land office at Lewiston, Idaho, July 13, 1904, No. 1452, for the

southeast quarter of section 7, township 38 north, range 6 east, Boise meridian; that he made final proof upon the same, and that the receiver's receipt and register's certificate were issued September 27, 1904; that Joseph W. Lane, by deed dated December 27, 1904, conveyed to Kittie E. Dwyer said last above described property, said deed being recorded December 30, 1904, in Book 80, page 42, of the records of the recorder of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally object to the evidence, on the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that Eugene A. Cox made application to enter a timber and stone claim at the United States land office at Lewiston, Idaho, November 22, 1904, No. 1557, for the south half of the northwest quarter, south half of the northeast quarter, section 24, township 38 north, range 6 east, Boise meridian; that he made final proof upon the same, and that the receiver's receipt and register's certificate were issued February 17, 1905; that Eugene A. Cox, by deed dated April 2, 1906, conveyed to J. M. Molloy said last above described property, said deed being recorded in the office of the recorder of [2696—2366] Nez Perce County, Idaho, in Book 89, at page 158.

Mr. TANNAHILL.—The defendants severally object to the evidence, on the ground that it is incompetent, irrelevant and immaterial, the entry

not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that George C. Davenport made application to enter a timber and stone claim in the United States land office at Lewiston, Idaho, September 21, 1904, No. 1526, for the north half of the southeast quarter, section 8, and the north half of the southwest quarter of section 9, township 38 north, range 6 east, Boise meridian; that he made final proof upon the same, and that the receiver's receipt and register's certificate were issued December 14, 1904; that George C. Davenport, by deed dated November 10, 1906, conveyed to William F. Kettenbach and George H. Kester said last above described property, said deed being recorded May 15, 1906, in Book 84, page 595, at the request of the Lewiston National Bank.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills.

Mr. GORDON.—It is further stipulated by and between the parties hereto, in open court, that Van W. Hasbrouck made application to enter a timber and stone claim in the United States land office at Lewiston, Idaho, November 22, 1904, No. 1556, for the north half of the northeast quarter, northeast quarter of the northwest quarter, section 24, and the southeast quarter of the southwest quarter of section 13, 38 north, 6 east, Boise meridian; that he made final proof upon the same, and that the receiv-

(Testimony of John C. Jansen.)

er's receipt and register's certificate were issued February 17, 1905; that Van W. Hasbrouck, by deed dated April 3, 1906, conveyed to J. M. Molloy said last above described property, said deed being recorded in Book 85, at page 492 of the records of Nez Perce [2697—2367] County, Idaho. That J. M. Molloy, by deed dated April 3, 1906, conveyed said land to William F. Kettenbach and George H. Kester, said deed being recorded in Book 89, page 158, of the records of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally object to the evidence, upon the ground that it is incompetent, irrelevant and immaterial, the entry not being involved in either of the bills. [2698—2368]

[Testimony of John C. Jansen, for Complainant.]

JOHN C. JANSEN, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Jansen, where do you reside?

A. I now reside sixteen miles out of Lewiston.

Q. How long have you resided in Idaho?

A. About ten years, or a little better.

Q. Were you living in Idaho in 1902, 1903, 1904 and 1905? A. Yes, sir.

Q. What was your occupation at that time?

A. Timber cruising.

Q. How long were you engaged as a timber cruiser? A. Since the fall of 1900.

(Testimony of John C. Jansen.)

Q. I will ask you, Mr. Jansen, whether you ever cruised and estimated the timber in township 38 north, ranges 5 and 6 east. A. Yes, sir.

Q. When did you estimate and cruise township 38 north, 5 and 6 east?

A. In the winter of 1903 and the spring of 1904, during the winter time. Then, I was there before, in the summer of 1903 awhile, and was there since that time several times.

Q. Now, look at section 6 of township 38 north, and tell, by quarter section, how much timber you estimated on each quarter of that section.

A. Those lands vary; they are not all the same. But they average up very well along in section 6 there; the timber on the west side of that section there is not as good as the land on the east side of the section. [2699—2369]

Q. What do you mean by the west side and the east side? Do you mean the east half and the west half of the section?

A. Yes, the west half there in section 6 is very light, being up on high ground, mostly red fir timber up in there, average about a million to a million and a half to the quarter section up in there. Then on the east half of the section there, which is considerably heavier, it will range along about two million.

Q. Now, how much timber did you estimate on the west half of the southeast quarter of section 6?

Mr. TANNAHILL.—We object to that on the ground that it is incompetent, irrelevant and imma-

(Testimony of John C. Jansen.)

terial, and that the estimates which he made are the best evidence.

A. That eighty in there will cut a little better than a million feet.

Mr. GORDON.—Q. Now, what about section 7? What will the timber in there estimate?

Mr. TANNAHILL.—The same objection.

A. That will go about a million and a half, all kinds of timber.

Mr. GORDON.—Q. To the section?

A. Yes.

Q. Now, look at the north half of section 17. What will the merchantable timber in that part of section 17 estimate?

A. That is better timber in there. That will go a million and a half to the quarter section.

Q. Now, the southwest quarter of section 17; what will that cruise and estimate?

Mr. TANNAHILL.—The same objection.

A. That is about the same as the north half of section 17. You spoke about the southeast quarter, didn't you? [2700—2370]

Q. The southwest quarter.

A. Oh, the southwest quarter? I understood you to say the southeast quarter.

Q. The southwest quarter of section 17.

A. There is very little timber on that. That is meadows, open ground there. There is a high bar, supposed to be placer ground, in there.

Q. How much merchantable timber is there on section 29, township 38-5?

(Testimony of John C. Jansen.)

Mr. TANNAHILL.—We object to that on the ground that it is incompetent, irrelevant and immaterial, and the estimates made by the witness, if any, are the best evidence.

A. Section 29 has got a good deal of burnt-over land on that. There isn't much timber on that. In the draws there is a little green timber on that, but it is very scattered.

Mr. GORDON.—Q. Now, the east half of section 30, how much timber is on that?

A. The same conditions prevail there.

Q. As did in 29? A. Yes.

Q. How about the west half of section 30?

A. That is better; that is lower down on the mountain.

Q. How much will that cruise to the quarter section?

A. Well, that will go a million and a half to the quarter section, mostly red fir.

Q. Now, how much timber is there on the east half of section 31, township 38-5?

A. There isn't a great deal on the northeast quarter of section 31—mostly red fir in there; about a million. The southeast quarter of section 31 is better, a million and a half. [2701—2371]

Q. What timber is on the west half of section 31?

A. That is better down in there; it will go about two million down in there.

Q. How much timber is there on the south half of section 27?

Mr. TANNAHILL.—The same objection.

(Testimony of John C. Jansen.)

A. That will run better than a million and a half; there is quite a bit of white pine in there.

Q. And the east half of 34?

A. That is good timber in there.

Q. What will that run to the quarter?

A. Two million.

Q. And the whole of 35? A. About the same.

Q. Two million to the quarter? A. Yes.

Q. I will ask you to look at the west half of the southeast quarter and the east half of the southwest quarter of section 23, township 38 north of range 5 east. Do you see that? A. Yes sir.

Q. I will ask you how much timber is on that quarter section?

A. That is good for two and a half to three million.

Q. Now, look at section 14, 38-5, and state how much timber is on the north half of the northeast quarter and the north half of the northwest quarter of section 14, 38-5.

A. Those are two two and a half million claims. There is some meadow runs through there, small meadows; they don't amount to very much. That is good timber up in there.

Q. Where is that? That border on the State section? A. No.

Q. Now, get 38-6, Mr. Jansen. How much timber will section 14, [2702—2372] 38-6, estimate and cruise to the quarter section?

A. At the time I was in there estimating the north side of the section was a good deal the heaviest; there was some pine timber along in there, but the south

(Testimony of John C. Jansen.)

half not very good.

Q. How much timber per quarter section would there be in the north?

A. The north half wouldn't probably cut more than a million and a half, because the good timber is not very wide in there.

Q. How about the south half of the section?

A. That would go about a million or a million and a half; some of them wouldn't go quite so much.

Q. Now, the north half of section 13?

A. There is some good timber in the northwest quarter of 13; that northwest quarter would cut about a million or a million and a half.

Q. How about the northeast quarter?

A. Not very much in the northeast quarter.

Q. How much? A. Less than a million.

Q. And the southeast quarter?

A. Not very good; about the same as the northeast.

Q. How about the southwest quarter of 13, with the exception of the southeast forty of the southwest quarter?

A. The same as the southeast forty; it is not very good; it is small.

Q. Do you know anything about that southeast quarter of the southwest quarter?

A. That is not so very good.

Q. Is the timber adjoining sections 14 and 13 on the north and south as good as that in sections 13 and 14?

A. Yes, sir; it is better on the north, a good deal

(Testimony of John C. Jansen.)

better. [2703—2373]

Q. Do you mean by better that there is more to the quarter section?

A. Yes, a better class of timber.

Q. Now, the south half of the northeast quarter of section 15, and the south half of the northwest quarter of section 15, 38-6, how much will that cruise to the quarter section?

Mr. TANNAHILL.—We object to that upon the ground that it is incompetent, irrelevant and immaterial.

A. That is small timber in there, will not exceed a million and a half at the very best.

Q. Well, how about the timber adjoining that on the north and south?

A. It is better on the north, and about the same on the south.

Q. Now, how much timber is there in the north half of section 22, and the southeast quarter of section 22?

A. Not very much.

Q. How much per quarter?

A. Scarcely cut a million.

Q. How about the southwest quarter of section 22, 38-6?

A. That is about the same in there.

Q. Now, how much timber to the quarter section will sections 26 and 27, and the northeast quarter, southeast quarter, and the southwest quarter of section 28, in 38-6, cruise and estimate to the quarter?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. That is all small timber in there; it won't any

(Testimony of John C. Jansen.)

more than average a million feet to the quarter section—all small and inferior timber.

Q. Now, how about the eighty, the north half of the northwest quarter of section 28, township 38-6? [2704—2374]

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Not much better there.

Mr. GORDON.—Q. Now, how much merchantable timber is on the east half of the section 32, 38-6?

Mr. TANNAHILL.—That is objected to as incompetent, irrelevant and immaterial.

A. That is a little better in there; that goes perhaps a million and a half in there.

Mr. GORDON.—How about the timber in the south half of section 24, 38-6?

A. That is light over in there.

Q. Will that go a million to the quarter section?

A. Just about.

Q. And the southeast quarter of 23?

A. That is no good in there.

Q. Will that go a million? A. No.

Q. And the northwest quarter of 25?

Mr. TANNAHILL.—It is understood that we have an objection to all of this evidence, that it is incompetent, irrelevant and immaterial, without the necessity of repeating the objection after each question.

Mr. GORDON.—Yes.

Q. The northwest quarter of 25, 38-6?

A. Small timber in there.

Q. What will it cruise to the quarter?

(Testimony of John C. Jansen.)

A. About a million feet.

Q. Now, what will the timber on the south half of section 7, 38-6, cruise, to the quarter section?
[2705—2375]

A. On the southwest quarter of section 7 it will go better than three million.

Q. And on the southeast quarter of section 7, 38-6?

A. About two.

Q. Million to the quarter?

A. Two million, yes, the southeast quarter.

Q. Now, how much timber is on section 18, 38-6?
Call it by quarter sections.

A. Those quarter sections in along the township line there will average three million feet easy enough on the west half of 18 and the west half of 19.

Q. How about the east half of 18 and the east half of 19?

A. They are about the same—not quite so heavy.

Q. Now, about the northwest quarter of section 30?

A. About two million in there.

Q. And the southwest quarter of 30?

A. That is light in there; it is small timber. It is small white pine; it is what we call a sap pine in there; it is short and small.

Q. And the east half of section 30?

A. About the same.

Q. The same as what? The southwest quarter?

A. Yes.

Q. Now, look at the northeast quarter of section 10.

A. In the same township?

(Testimony of John C. Jansen.)

Q. Yes; 38-6. A. All right.

Q. How much timber is on that?

A. Northeast quarter of section 10? [2706—2376]

Q. Yes. A. 38, 6 east?

Q. Yes.

A. Oh, I should judge there would be three million there, or a little better; it is nice big stuff.

Q. To the quarter? A. Yes.

Q. Now, section 20, 38-6? Find that.

A. Southwest of 20?

Q. No, section 20. Have you got that?

A. Yes.

Q. The east half of the northeast quarter and the east half of the southeast quarter, how much timber is on that? The east half of the northeast quarter and the east half of the southeast quarter, section 20, 38-6?

A. That will cut two million; it is on the mountain side.

Q. Now, look at section 18, 38-6, lots 1 and 2, and the east half of the northwest quarter, how much timber is on that? A. What was the description?

Q. One and two, and the east half of the northwest quarter of section 18, 38-6.

A. That is a three million claim in there.

Q. Now, lots 1 and 2, and the east half of the northwest quarter of section 30, 38-6; 1 and 2, east half of the northwest quarter of section 30, 38-6.

A. That is a two million claim in there.

Q. And section 18, 38-6, lots 3 and 4, north half of the southwest quarter, how much is on that?

(Testimony of John C. Jansen.)

A. That is a three million claim in there.

Mr. GORDON.—That is all, Mr. Jansen. [2707—2377]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Jansen, how did you estimate this land?

A. Passing over the land in a systematic way, the same as cruisers are accustomed to do.

Q. Well, what did you do in the way of estimating it—just simply passed over it?

A. Passed over it and took notice of the character of the timber, the size of it, and the amount of it and the quantity of it, and so forth.

Q. Did you count the trees?

A. I did, yes; to average them up.

Q. On how much of it did you count the trees?

A. Usually do that on every forty-acre tract, sometimes three or four times.

Q. How did you estimate the timber on the north-east quarter of section 18, township 38, 6 east?

A. By the same method.

Q. How much of it did you pass over?

A. Passed over each forty-acre tract, each subdivision.

Q. Whose claim was that ?

A. It wasn't anybody's at that time.

Q. When did you estimate it?

A. In the winter of 1903 and 4.

Q. Who afterwards settled on that claim?

A. I couldn't tell you.

(Testimony of John C. Jansen.)

Q. Don't you know there was a settler on there in 1903 and 1904?

A. There was foundations there for cabins on those claims, but I understand there was no actual settler there.

Q. Are you sure there was no actual settler on section 18, township [2708—2378] 38, range 6 east?

A. There was a squatter there, that is, an absent one.

Q. Who was he?

A. I couldn't tell you, because he wasn't there when I was there.

Q. Do you know Jack Maloney? A. Yes, sir.

Q. Do you know his father in law? A. Yes, sir.

Q. Don't you know that he was on that claim?

A. He wasn't there when I was there.

Q. Was there any buildings there?

A. He hadn't made any effort for that claim at the time I was in there.

Q. Well, now, have you any particular recollection of estimating that particular quarter section?

A. The same as I have on all the balance of them.

Q. Just a general recollection of it?

A. Yes, sir.

Q. Have you any record of your estimate?

A. Not at the present time.

Q. What did you do with them?

A. I burnt them up; I think I did. I couldn't find them anyway. When I moved out of town this spring I burned up all my records pertaining to my timber work, because I figured I was through with it, be-

(Testimony of John C. Jansen.)

cause I was going to farming and didn't want to pack them around with me and be encumbered.

Q. You are simply testifying from your general recollection of passing over the land? A. Yes, sir.

Q. Have you any recollection of estimating section 10, township 38, range 6 east? [2709—2379]

A. Yes, sir.

Q. What do you remember about that?

A. Section 10, the most of it lays along Washington Creek there, and there is considerable meadow on section 10, and it is cut up, and part of section 10 is pretty good.

Q. How about section 16?

A. Section 16 lays up on the mountain-side.

Q. Have you any independent recollection of estimating that? A. Part of it is meadow.

Q. Now, did you estimate the land scripped by the Northern Pacific Railroad Company immediately north of section 16?

A. I did not, with the exception of some vacant lands that laid scattered in between it, some in section 10 there, and 8 and 9; I looked them over.

Q. Now, the Northern Pacific Railroad Company had filed scrip on the best part of this timber, had they not? A. Yes, sir.

Q. About how much land had they taken in the northern part of this township 38, 6 east?

A. They had taken very near two strings of sections on the north with the exception of some few pieces.

Q. And there was a number of homesteaders in this

(Testimony of John C. Jansen.)

section of the country at the time it was thrown open to entry, was there not?

A. Well, there were cabins in there, supposed to be homesteaders', yes.

Q. And there was a number of homesteads filed on this best timber in this township, was there not?

A. Yes, sir.

Q. And afterwards these homesteads were relinquished and the timber and stone entrymen filed, were they not? [2710—2380] A. Yes, sir.

Q. And in that way they beat the State out of a great deal of good land, did they not?

A. Some of them; there was very few of those, very few of them.

Q. Well, the State had to take what was left by the Northern Pacific after they had laid their scrip and what was left by Schofield when he had scripped nearly a third of the township, and what was left after the settlers had got what they had settled on, did they not?

A. In reference to the homesteads, I wish to say that the State did take some of the homesteaders' land, and some of it they didn't.

Q. Well, all of them who made the affidavit of a *bona fide* settlement and asserted their rights were ahead of the State, were they not? A. Yes, sir.

Q. Then those claims and claimants came in ahead of the State? A. They did.

Q. And the State was compelled to take about third class land, were they not?

A. Yes, sir; what they did take was about third or

(Testimony of John C. Jansen.)

fourth class land, but there was a lot of land there that was really available for the State that they didn't take.

Q. But they was compelled to take, in any way you might fix it, third or fourth class land?

A. That is what they did take. They didn't take all that was coming to them or that they could have had.

Q. When Schofield had taken his scrip and his land, comprising nearly a third of the township, and the Northern Pacific Railway Company had scripped about as much again, they took the best part of it, did they not?

A. Yes, sir; they had the first selection in there; they were about [2711—2381] three or four years prior in their selections to any other selections.

Q. And then the homesteaders came in and took the next best, did they not?

A. They was supposed to, but they didn't.

Q. The homesteaders was supposed to?

A. Yes, sir.

Q. Now, a timber claim that goes a million and a half or two million feet is considered a pretty good claim, isn't it, Mr. Jansen?

A. Not in that section of the country.

Q. Isn't it considered a pretty good claim in any section of the country? A. No, sir, it is not.

Q. What is timber worth a thousand?

A. I don't know what it is worth at this present time.

Q. What was it worth then?

(Testimony of John C. Jansen.)

A. The southwest of section 18, 38-6, sold for \$3,500.00 at that time, that is, a little bit later, that is, 1905 or 1906.

Q. What is timber worth a thousand?

A. Worth a dollar, straight through.

Q. Then, a claim of two million feet would be worth upwards of \$2,000.00? A. Yes, sir.

Q. And a claim of a million and a half feet would be worth upwards of \$1,500.00, or more?

A. Yes, sir.

Q. And timber is worth about two dollars and a half a thousand in there now, isn't it?

A. Well, that depends.

Q. Well, without any dependence at all, you know that it is, don't you?

A. I know if I had a claim in there I wouldn't get that much. [2712—2382]

Q. Now, you testified to some values in 38, 5 east. The Northern Pacific Railway Company had scripped about a fourth or fifth of the township lying on the north and northeast, taking about the best timber there was in the township, hadn't they?

A. The best class of timber.

Q. The best class of timber?

A. Yes, sir; not necessarily the quantity, but the class of timber was better.

Q. And they also scripped some in the northwest, taking the best class of timber, didn't they?

A. Yes sir.

Q. And there was some homestead settlers settled in this township also, was there not? A. Yes, sir.

(Testimony of John C. Jansen.)

Q. And they took the next best timber?

A. They were supposed to, yes.

Q. And that left the third or fourth class of timber for the State and the timber and stone claimants?

A. I don't see why the State didn't take what was available for the timber and stone entrymen; there was nothing to prevent them from taking it. The whole township is good timber.

Q. Well, answer my question.

Mr. GORDON.—I object to that on the ground that it is argument.

A. Yes, sir.

Mr. TANNAHILL.—Q. You are not very friendly with the defendants, are you, Mr. Jansen?

A. I am not unfriendly or anything of that kind; I have had no trouble with them.

Q. But you and the defendants were competitors in some of these townships and in a great many places, in endeavoring to acquire land, [2713—2383] was you not?

A. I wasn't endeavoring to acquire any land, other than locating people on land.

Q. You was locating people on land?

A. Yes, sir.

Q. And there was some times that you conflicted, was there not? A. Yes, sir.

Q. And there has not been a very friendly feeling since that time between you and the defendants?

A. Nothing personal whatever.

Q. You have not felt very friendly to them, have you, especially to Mr. Dwyer?

(Testimony of John C. Jansen.)

A. I feel friendly to any man that has got any principles, and a man that ain't, I don't.

Q. And you don't think Mr. Dwyer has any principles, do you? A. He didn't show it in the timber.

Q. And you are unfriendly to him?

A. It is just as I say; I don't respect a man that don't respect other people's rights.

Q. And you would like to see the defendants lose this land, wouldn't you?

A. I don't think they are entitled to it.

Q. And you would like to see them lose it?

A. I certainly would.

Q. And anything you could do or say to cause them to lose it, you would do, wouldn't you?

A. Anything that was the truth.

Q. And anything you could do to assist the prosecution in this case you would do it?

A. I would stay with the truth, whatever it was, regardless of the consequences. [2714—2384]

Q. Who did you first talk with about your evidence? A. Why, I think it was Mr. Smith.

Q. When did you talk with him? A. Yesterday.

Q. Did you talk with him before that?

A. No, sir.

Q. Did you talk with anyone else before that?

A. I did not.

Q. You and Mr. Fitzgerald was associated in locating people on timber land together, were you not?

A. We were at that time; yes.

Q. You knew that Mr. Fitzgerald was very unfriendly with the defendants, did you not?

(Testimony of John C. Jansen.)

A. For the same reason.

Q. And they had considerable trouble, did they not? A. I think they did.

Q. How many claims did you and Fitzgerald locate people on in 38-5? A. I located one person.

Q. How many did Fitzgerald locate?

A. I don't know anything about it.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Jansen. [2715—2385]

[Stipulation Re Potlatch Lumber Co.; Re Errors and Omissions in Record, etc.]

Mr. TANNAHILL.—It is stipulated by and between the respective parties hereto, in open court, that the Potlatch Lumber Company is a corporation duly and regularly organized, created and existing under and by virtue of the laws of the State of Maine, doing and conducting business in the State of Idaho in full compliance with the laws thereof; and that the Clearwater Timber Company is a corporation duly and regularly organized, created and existing under and by virtue of the laws of the State of Washington, doing and conducting business in the State of Idaho in full compliance with the laws thereof.

It is further stipulated and agreed by and between the parties hereto, in open court, that in case of an error or errors, or omission or omissions appearing in the record in the evidence of any witness or witnesses, or any documentary evidence, that the same shall be corrected at any time it is discovered.

It is further stipulated by and between the parties hereto, in open court, that in any case where there is a variance between the date of the patent as alleged in the bills in said causes, and any patent offered in evidence in said causes, that the patent so offered in evidence shall be considered the same as though the date was correctly alleged in the bill.

It is further stipulated by and between the parties hereto, in open court, that the correspondence and letters attached to the several state selections that were offered in evidence at Boise, Idaho, on October 1, 1910, and which are copied into the record, shall be considered as offered in evidence as though said letters and correspondence were offered at that time, subject, however, to the defendants' objection as to the competency, relevancy and materiality of the same, the defendants waiving any further identification of said letters and correspondence.

It is further stipulated and agreed by and between the parties hereto, in open court, that a certain map of the fire patrol, or a copy [2716—2386] of the same, may be offered in evidence at the close of the defendants' case, the defendants waiving any objection that the same is not proper rebuttal testimony, but reserving the right to object to the admission of the same in evidence upon the ground that it is incompetent, irrelevant and immaterial.

It is further stipulated and agreed by and between the respective parties hereto, in open court, that the reference of the evidence of the witness Rowland A. Lambdin to the Judge of the above-entitled court may be taken up at a later date, and in case the Court

holds that the witness should testify in the cause, that the complainant shall have the right to introduce the evidence of the witness, the defendants waiving any objection that it is not proper rebuttal testimony, but reserving the right to object to the evidence upon account of competency, relevancy and materiality.

It is further stipulated and agreed by and between the respective parties hereto, in open court, that any errors or omissions in the abstracts of title heretofore introduced in evidence by stipulation may be corrected, and any additions may be made before the close of complainant's case in rebuttal, the respective parties waiving any objection that the same is not proper rebuttal testimony.

Mr. GORDON.—The complainant rests its case.

Mr. TANNAHILL.—It is stipulated and agreed by and between the respective parties hereto, in open court, that the defendants may proceed with the taking of their evidence on Thursday, the 13th day of October, A. D. 1910, the complainant waiving the ten days' notice provided for in the rules of the court.

An adjournment was thereupon taken until ten o'clock A. M., Thursday, October 13th, 1910.
[2717—2387]

On Thursday, the 13th day of October, 1910, at ten o'clock A. M., the hearing was resumed at the courtroom of the District Court in and for Nez Perce County, State of Idaho, at the county court courthouse, in Lewiston, Idaho.

Mr. TANNAHILL.—Before starting, I want to make a motion.

Motion for Judgment of Nonsuit.]

Now, at this time, the complainant having closed its case in chief, the defendants severally move for a nonsuit, upon the ground that the evidence is insufficient to sustain any of the allegations of the bills, or either thereof; that the evidence affirmatively shows that there was no conspiracy, as charged in the bill, and that there was no fraud in the acquisition of any of the claims; that the claims were acquired originally by entrymen who were entitled to acquire 160 acres of land under the timber and stone laws of the United States, and no reason exists or has been shown by the evidence for the cancellation of the patents to either of the tracts of land set out and referred to in either of the bills on file herein. This motion applies with equal force to bills No. 388, 406 and 407. [2718—2388]

[Testimony of Thomas H. Bartlett, for Defendants.]

THOMAS H. BARTLETT, a witness called on behalf of the defendants, having been heretofore duly sworn, testified as follows:

Direct Examination.

(By Mr. TANNAHILL.)

Q. Mr. Bartlett, I show you an affidavit signed by Walter Williams or purporting to be signed by Walter Williams on the 24th day of February, 1904, and accompanying the filing papers of Walter Williams filed in the United States land office February 24th, 1904. You have been examined before in this case, haven't you? A. Yes.

Q. I will ask you if you have seen that paper be-

(Testimony of Thomas H. Bartlett.)

fore. A. Yes.

Q. Where did you see it?

A. It was returned to us through regular correspondence, returned to the office of the register and receiver of the land office here from the Commissioner of the General Land Office.

Q. What official position do you hold?

A. I am register of the land office at Lewiston.

Q. How long have you been register?

A. Since 1906.

Q. That is a record and file of your office, or of the land office? A. Yes.

Mr. TANNAHILL.—We offer in evidence the affidavit, and ask that it be read into the record, so that the document itself can be returned to the register, it being a file of the land office. The affidavit is as follows:

[Defendants' Exhibit No. 3A.]

**“IN THE UNITED STATES LAND OFFICE
AT LEWISTON, IDAHO,
FEBRUARY 24th, 1904.**

Supplemental Affidavit Alleging Prior Settlement.

State of Idaho,

County of Nez Perce,—ss. [2719—2389]

Walter Williams, being first duly sworn, upon his oath deposes and says that he is a single man and a native born citizen of the United States; that heretofore and on to wit: the 15th day of March 1903 affiant settled as a squatter upon a portion of the public domain which is described as the N. ½ NW.

(Testimony of Thomas H. Bartlett.)

1/4 and N. 1/2 NE. 1/4 of Sec. 15, Twp. 38 N., R. 6 E., B. M.; that affiant settled upon and selected said land in good faith with the express object of having and holding the same under the homestead and settlement laws as applicable in such cases; that on the date of settlement herein referred to the said tract of land was surveyed but not subject to entry or accepted by the U. S. Government; that affiant erected a house upon the said land at the time herein referred to, said house being of the dimensions of 14x16 feet and built of logs as material, which said house upon said land affiant occupied.

WALTER WILLIAMS.

Subscribed and sworn to before me this 24th day of February, 1904.

J. B. WEST,
Register."

Said affidavit was thereupon marked by the Reporter as Defendants' Exhibit No. 3A.

Mr. GORDON.—We object to it on the ground that it is incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. I show you affidavit purporting to have been signed by Albert J. Flood on February 24, 1904, before J. B. West, Register. I will ask you if that is a record and file of the land office. A. Yes.

Q. Where did you first see it?

A. It was returned to the local office by the Commissioner of the General Land Office.

Q. And it is a part of the files of the homestead application and filing papers of Albert J. Flood, is

(Testimony of Thomas H. Bartlett.)

it? [2720—2390] A. Yes.

Q. And an original record of the land office?

A. Yes.

Mr. TANNAHILL.—We offer this affidavit in evidence and ask that it be marked the defendants' proper exhibit, and ask that it be copied into the record, and the original returned to the witness, as the same is an original record of the land office.

Said affidavit was thereupon marked by the Reporter as Defendants' Exhibit No. 4A, and the following is a copy of the same:

[Defendants' Exhibit No. 4A.]

**“IN THE UNITED STATES LAND OFFICE
AT LEWISTON, IDAHO,**

FEBRUARY, 24th 1904.

Supplemental Affidavit Alleging Prior Settlement.

State of Idaho,

County of Nez Perce,—ss.

Albert J. Flood, being first duly sworn upon his oath deposes and says that he is the head of a family and a native born citizen of the United States; that heretofore and on to wit: the 15 day of March 1903 affiant settled as a squatter upon a portion of the public domain which is described as the S. $\frac{1}{2}$ SW. $\frac{1}{4}$ and S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 15, Twp. 38, N., R. 6 E., B. M.; that affiant settled upon and selected said land in good faith with the express object of having and holding the same under the homestead and settlement laws as applicable in such cases; that on the date of settlement herein referred to the said tract of land

(Testimony of Thomas H. Bartlett.)

was surveyed but not subject to entry or accepted by the U. S. Government; that affiant erected a house upon the said land at the time herein referred to, said house being of the dimensions of 14x16 feet and built of logs as material, which said house upon said land affiant occupied.

ALBERT J. FLOOD.

Subscribed and sworn to before me this 24th day of February, 1904.

J. B. WEST,

Register." [2721—2391]

Mr. GORDON.—We object to it as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. Mr. Bartlett, I show you a list of the homestead filings that were made in the United States Land Office February 24th, 1904, and ask you to examine it and tell us how many of those made proof, homestead proof.

Mr. GORDON.—That is objected to as incompetent, irrelevant and immaterial.

A. The only entrymen who made homestead proof were Thomas J. Root, of Orofino, Idaho, for the east half of the northwest quarter, the northwest of the northwest of section 27, the northeast of the northeast of section 28, township 40 north, range 5 east; and Thomas L. Harris, of Orofino, for the south half of the northwest quarter of section 25, and the southeast of the northeast and the northeast of the southeast of section 26, township 37 north, range 3 east.

Mr. TANNAHILL.—Q. I will ask you if you have examined your records to ascertain whether or

(Testimony of Thomas H. Bartlett.)

not the entrymen named on this list, named Ferdinand Roos, Jr., and concluding with the name Anton Wholen are homestead entrymen who made their entry February 24th, 1904, according to the records of the land office.

Mr. GORDON.—The same objection, that it is incompetent, irrelevant and immaterial.

A. I haven't examined the records with the view of ascertaining when these entrymen filed, as to whether they made proof or not.

Mr. TANNAHILL.—This is the one we stipulated on up there, Mr. Gordon, at the time I furnished you the list of the timber and stone entries that Joe Molloy identified. He identified these as the homestead entrymen. [2722—2392]

Mr. TANNAHILL.—We offer in evidence the list of homestead entrymen referred to by the witness, designated as list of homestead filings made in the Lewiston land office February 24, 1904, beginning with the name Ferdinand Roos, Jr., and concluding with the name Anton Wholen.

Said list was thereupon marked by the Reporter as Defendants' Exhibit No. 5A.

Mr. GORDON.—We object to it as incompetent, irrelevant and immaterial, waiving any further identification of the paper.

Mr. TANNAHILL.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. What became of those entries upon which the proof was not offered? Were they subsequently

(Testimony of Thomas H. Bartlett.)

entered by the same people under timber and stone entries?

A. Some of them were. I have marked those entries that were thus entered with T. & S., and the date the proof was made.

Q. Were they by the same persons?

A. By the same people; yes.

Q. If they weren't by the same people, will that paper show by whom the property was entered?

A. No.

Mr. GORDON.—That is all. [2723—2393]

[**Testimony of Curtis Thatcher, for Defendants.**]

CURTIS THATCHER, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. Curtis Thatcher.

Q. What is your age? A. 35.

Q. Where do you live? A. Lewiston, Idaho.

Q. What is your business?

A. I am in the book and stationery business.

Q. What relation do you sustain to the defendant Elizabeth Thatcher? A. Son.

Q. Are you acquainted with Clarence W. Robnett?

A. I am.

Q. How long have you known him?

A. 20 years, I guess.

Q. I will ask you if at one time you loaned some money to entrymen, on your own behalf or for your mother, on timber claims, and these loans being made.

(Testimony of Curtis Thatcher.)

to or through Clarence W. Robnett?

A. Yes, sir, some of them were.

Q. I will ask you, Mr. Thatcher, if Mr. Robnett at any time told you the arrangements that he had with the entrymen, or that he had an arrangement with the entrymen to purchase their land, or to sell their land, prior to the time they filed their sworn statement or made final proof?

Mr. GORDON.—Objected to on the ground that it is leading and suggestive.

Mr. TANNAHILL.—Just answer the question yes or no.

A. No. [2724—2394]

Q. I will ask you if you are acquainted with John E. Nelson. A. I am.

Q. I will ask you if Mr. Robnett made any statement to you as to any arrangement he had with John E. Nelson for the purchase or sale of his land, prior to the filing of the sworn statement of John E. Nelson, or prior to the making of the final proof of John E. Nelson. A. Not that I remember.

Cross-examination.

(By Mr. GORDON.)

Q. You have no independent recollection of when Mr. Nelson filed or when he made his final proof, have you, Mr. Thatcher? A. No.

Mr. GORDON.—That is all. [2725—2395]

[Testimony of Clarence E. Thiessen, for
Defendants.]

CLARENCE E. THIESSEN, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?

A. Clarence E. Thiessen.

Q. Where do you live, Mr. Thiessen?

A. Lewiston, Idaho.

Q. What is your age? A. 28.

Q. I will ask you, Mr. Thiessen, if you was ever an employee of the Lewiston National Bank.

A. I was.

Q. During what periods of time?

A. I believe it was in 1903 and 1904. I commenced work in November, 1903, and left in February, 1904, if I remember correctly, or either 1902 or 1903, I don't just recall the date, but I think it was 1903 and 1904.

Q. I will ask you, Mr. Thiessen, if you are acquainted with Clarence W. Robnett. A. I am.

Q. Was he employed in the bank at the same time?

A. Yes, sir.

Q. And what was your duties in the bank?

A. I looked after the collections. I was merely an apprentice.

Q. And what desk did you work at?

A. At the collection desk, most of the time.

Q. And what kind of a desk was it?

(Testimony of Clarence E. Thiessen.)

A. A flat-top desk.

Q. And where was that situated in relation to the interior of the bank?

A. About the center of the banking-room.
[2726—2396]

Q. And how far from W. F. Kettenbach's private office?

A. Oh, possibly ten or twelve feet from the door.

Q. Mr. W. F. Kettenbach was President of the Bank at that time, was he? A. Yes, sir.

Q. And George H. Kester Cashier?

A. Yes, sir.

Q. And Clarence W. Robnett a bookkeeper?

A. Yes, sir.

Q. And where was Robnett's desk? Where did he work?

A. To the right of my desk, against the wall, at the depositors' ledger.

Q. I will ask you, Mr. Thiessen, to state whether or not an ordinary conversation could be heard and understood from W. F. Kettenbach's private office into the interior of the bank, at your desk where you was working—the flat-top desk—or at the bookkeeper's desk, where Robnett worked.

A. I never heard any myself.

Q. Well, state whether or not an ordinary conversation could be heard, if you know.

A. No, sir, I don't believe it could.

Q. And state any reason you have for believing that it could not be heard.

A. Several different times when I was in there my

(Testimony of Clarence E. Thiessen.)

father went in to borrow money that I knew of, and he was rather a loud talking man, and I listened two or three times to hear him, and I never heard anything he said. And another time I recall was when Mr. Lester Coffin went in there to get some money, and I can't recall any conversation I heard from them. I could hear the mumbling, but I couldn't understand.

Q. How far was Mr. Robnett's desk—the bookkeeper's desk—from Mr. Kettenbach's private office?

A. It was the full distance of the room. [2727—2397]

Q. That was farther from the private office of W. F. Kettenbach than the flat top desk, was it not?

A. Yes, sir.

Q. And how much of the time did Robnett put in at the bookkeeper's desk, ordinarily?

A. I don't know; he was there most all the time he was at work during hours, or except what little running around he had to do.

Q. I will ask you, Mr. Thiessen, if you ever heard timber matters discussed by George H. Kester and William F. Kettenbach or Clarence W. Robnett, or either of them, in the interior of the bank building.

A. No, sir.

Q. State whether or not you ever heard any conversation relative to timber claims, between either of the parties, in the bank building? A. No, sir.

Q. State whether or not you ever overheard a conversation between George H. Kester and William F. Kettenbach, or either of them, with any of the par-

(Testimony of Clarence E. Thiessen.)

ties, in Mr. William F. Kettenbach's private office.

A. No, sir.

Cross-examination.

(By Mr. GORDON.)

Q. I understood you to say that you were an apprentice at the bank? A. Yes, sir.

Q. What is that—to learn the banking business?

A. Yes, sir.

Q. And were your duties other than to endeavor to learn banking?

A. Well, just merely to answer the—to look after the collections, and that was all. I was just merely an apprentice, learning the banking business.

Q. And how old were you at that time?

A. I was born in '82, and that was 1903. [2728—2398]

Q. You had just left school? A. Yes, sir.

Q. And you were in the bank about three months?

A. Four months.

Q. And this was in the spring of 1903 that you left?

A. No, sir; it was in November, 1903, and—it was during November, 1903, and until February, 1904.

Q. I understood you to say you didn't know whether it was 1904 or 1904?

A. I think it was either 1902 and 1903, or 1903 and 1904, I don't recall the date; but I believe it was 1903 and 1904.

Q. Have you any way of fixing it definitely, that date? A. At home I could easily find out.

Q. And were you at your desk pretty much of the

(Testimony of Clarence E. Thiessen.)

time, or weren't you in and out of the bank?

A. I was at my desk the greater part of the time, except when I was sent out of the bank on different errands.

Q. And this office of Mr. Kettenbach's was merely a glass partition off at one side of the bank, was it not?

A. It was a square—it was enclosed. The top was open, of course.

Q. And from about four feet above the floor it was glass to the top, was it? Is that correct?

A. I know there was some glass. I don't remember what distance from the floor the glass was; but there was some glass there.

Q. And the sides of the office only ran up eight or ten feet?

A. At least ten feet, if I remember correctly. I don't just remember.

Q. And you say that you couldn't hear an ordinary conversation? A. At least, I never heard any.

Q. You can hear what I say very distinctly, can't you?

A. I can from there, yes, sir. [2729—2399]

Q. And I am more than twelve feet away from you, am I not?

A. Yes, sir; but that is not between a partition.

Q. And I am not speaking louder than an ordinary conversation, am I?

A. You are speaking direct to me.

Q. Well, but that is not answering my question.

A. Well, no, I don't suppose you are speaking any

(Testimony of William Schuldt.)

louder than an ordinary conversation.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [2730—2400]

On Friday, the 14th day of October, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of William Schuldt, for Defendants.]

WILLIAM SCHULDT, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. William Schuldt.

Q. Where do you live, Mr. Schuldt?

A. Lewiston, Idaho.

Q. What is your business?

A. I am in the insurance and real estate business.

Q. Where did you live in the months of August and September of 1903? A. In Lewiston, Idaho.

Q. What official position, if any, did you hold during that time?

A. I was Sheriff of Nez Perce County.

Q. As Sheriff of Nez Perce County did you have as one of your deputies Charles Monroe?

A. Yes, sir.

Q. Do you know Ivan R. Cornell?

A. I have met him.

Q. I will ask you if you met Ivan R. Cornell about the latter part of August or the fore part of September in 1903? A. I did.

Q. Where did you meet him?

A. In the courthouse. [2731—2401]

(Testimony of William Schuldt.)

Q. Under what circumstances did you meet him?

A. He came to the Sheriff's office, looking for Charlie Monroe.

Q. I will ask you if you had a conversation with him at that time? A. I did.

Q. I will ask you, Mr. Schuldt, if you had the following conversation with Ivan R. Cornell, a witness who testified in this case about the last of August or the first of September or immediately or sometime prior to the time he made his final proof on his homestead,—

Mr. GORDON.—Where are you reading from?

Mr. TANNAHILL.—I am reading from page 2204.

Q. —yourself and Ivan R. Cornell and none others being present: “Ab Masters has vagged me, or threatened to vag me. Will you go and see Masters and talk to Ab Masters about it for me? I have filed on a timber claim, and as soon as I sell it I will have money, or will be all right,” or words in substance and to that effect?

Mr. GORDON.—One moment. Objected to on the ground that it is incompetent, irrelevant and immaterial, no proper foundation having been laid for such question, and if the witness Cornell had been inquired of concerning any such conversation it was as to an immaterial matter, as to which he could not be impeached.

Mr. TANNAHILL.—Just answer it yes or no.

A. I did; yes, sir.

Q. Did you at the same time and place have the

(Testimony of William Schuldt.)

following conversation with Ivan R. Cornell, in Lewiston, Nez Perce County, State of Idaho, yourself and Ivan R. Cornell and none others being present: "Ab Masters has vagged me and threatened to run me out of town. Will you go and see Ab Masters, the Chief of Police, and tell him I have filed on a timber claim, and as soon as I sell it I will have money, or be all right," or words in substance and to that effect? A. Yes, sir. [2732—2402]

Cross-examination.

(By Mr. GORDON.)

Q. What position did you hold in 1903, Mr. Schuldt? A. I was Sheriff of Nez Perce County.

Q. And how long were you Sheriff?

A. Two years.

Q. And was that till some time in 1905?

A. No—yes.

Q. And what was your occupation after that time?

A. I was County Treasurer two years following the term of office as Sheriff of Nez Perce County.

Q. Were you elected at the term of your office as Sheriff, as County Treasurer?

A. Yes; I ran for Treasurer during the fall while I was still Sheriff, and was elected.

Q. And how long did you serve in that capacity?

A. Two years. I served the term.

Q. That was till 1907?

A. Yes, sir, till January, 1907.

Q. And have you been in office since then?

A. No, sir.

(Testimony of William Schuldt.)

Q. And you say you are engaged in the real estate business now?

A. The real estate and insurance business.

Q. Now, you say you had a conversation with Mr. Cornell? A. Yes, sir.

Q. Some time in 1903? A. Yes, sir.

Q. Do you remember the month?

A. I wouldn't say positively whether it was August or September.

Q. You don't know whether it was August or September?

A. I wouldn't say positively which month it was.

Q. And where did you see him? [2733—2403]

A. He came into the Sheriff's office one evening; that is, along probably four o'clock.

Q. Was that the first time you had ever seen him?

A. Oh, no.

Q. Did you know him to speak to?

A. I knew him by sight, around town.

Q. What did Mr. Cornell say to you?

A. Why, he first asked for Mr. Monroe, and Mr. Monroe wasn't there, and then he asked me to step out in the hall, and I stepped out, and we had the conversation about as I have testified to.

Q. Well, now, what did he say?

A. Well, he said in substance that he had come up to see Monroe; that Ab Masters had vagged him and threatened to run him out of town, and that he was from Portland, and knew the Monroe family in Portland, or some of their connections, and had done some work for Mrs. Monroe here in town, and

(Testimony of William Schuldt.)

Charlie knew of it, and he wanted to see Charlie, if Charlie couldn't use his influence with Masters; and after he related the object of his visit why he asked me to do the same thing.

Q. Is that all he said?

A. Well, he told me how he was situated; that he had filed on a timber claim, and just as soon as he could make proof and sell that he would have money, and would be in better circumstances.

Q. And did you see Mr. Masters?

A. I don't think I did.

Q. To whom did you first tell of this conversation?

A. Why, I told Monroe, I think, when Monroe came in.

Q. And who next did you tell about it?

A. I don't remember.

Q. Well, did you tell any of the defendants?

A. Yes, sir.

Q. Which one did you tell?

A. Either Mr. Kester or Mr. Dwyer, I wouldn't say which. [2734—2404]

Q. You don't know which one? A. No.

Q. Well, when did you tell that to them?

A. I don't remember.

Q. Well, how long after the occurrence?

A. It was some time after—if I may go into detail, this conversation didn't come back to me till after the second trial in Moscow.

Q. That was until after the trial that the defendants were tried?

A. Yes; I didn't tell any of them until after the

(Testimony of William Schuldt.)

second trial in Moscow.

Q. And that was three or four years after that, wasn't it? A. Yes, sir.

Q. Well, now— A. They were tried in 1907.

Q. Yes; and this was in 1903?

A. 1903; yes, sir.

Q. And how long after that trial was it that you told them? Wasn't it just last February sometime?

A. No.

Q. Just before the trial at Boise?

A. I think I told them before that time.

Q. How long before that? A. I couldn't say.

Q. Well, was it six months or a year?

A. It was probably— If I told Mr. Kester I probably told him the same summer—1907.

Q. Well, now, haven't you any definite recollection as to whom you told?

A. Well, I might say this: When Cornell was here he was poorly clad. Now, when I saw him in Moscow I didn't know him; he was well-dressed and in prosperous circumstances, and he was pointed out in the [2735—2405] hall there one morning.

Q. By whom?

A. By Lew Pennell and George Erb, if I remember correctly; and we talked there, and when they described him to me I placed him as the same Ivan R. Cornell who had been here in Lewiston and that I had the conversation with; and it is possible that I told Kester about it the same summer.

Q. You didn't tell him about it before the trial was over, though? A. No, sir.

(Testimony of William Schuldt.)

Q. Now, do you remember that when you testified in Boise that you didn't remember the month that you had this conversation with Mr. Cornell?

A. Why, I think I testified to the summer of 1903—July and August, or August or September.

Q. Well, don't you know that you didn't testify as to what month it was?

A. I didn't say positively.

Q. Well, have you refreshed your recollection in any way since then?

A. I have seen the transcript since, or the copy of the testimony.

Q. And when did you see that?

A. Several days ago.

Q. Who showed it to you? A. Mr. Dwyer.

Q. Mr. who? A. Mr. Dwyer

Q. And that was a copy of the testimony that you gave at Boise? A. Yes, sir.

Q. In the trial of Kester, Kettenbach and Dwyer, in February last? A. Yes, sir. [2736—2406]

Q. Now, do you remember this question being asked you by me at that trial: "When was it that you had this conversation that you have related with Mr. Cornell?" "Answer. During the summer of 1903." Do you remember that question being asked, and that answer made by you? A. I think I do.

Q. "Question. What part of the summer?" "Answer. It was pretty well along in the middle of the summer, to the best of my recollection." "Question. Do you remember the month?" "Answer. I wouldn't say as to that, no, sir." Do you remember

(Testimony of William Schuldt.)

those questions being asked you? A. Yes.

Q. Then, you are not positive of the month?

A. Yes, I think I am.

Q. Sir? A. I think I am.

Q. Well, now, what is it that makes you positive of the month?

A. Well, I have given the matter considerable thought, and he told me he was about to prove up on a timber claim, and he made proof on the timber claim in September.

Q. And you have looked at his proof to see when he made his proof; is that correct?

A. No, sir; I haven't looked at his proof.

Q. How did you find out when he made his proof?

A. Well, I gathered it from the testimony that was given down at Boise.

Q. Whose testimony?

A. Why, I read all the testimony that came out in the papers.

Q. You read Cornell's testimony?

A. I read the reports that were in the papers of Cornell's testimony.

Q. Have you read his testimony as it was taken by the stenographer? [2737—2407]

A. No, sir.

Q. And you remember that Mr. Cornell made his proof in September? A. Yes, sir.

Q. 1903? A. Yes, sir.

Q. And that refreshes your recollection to that extent?

A. That fixes it in my mind more positively.

(Testimony of William Schuldt.)

Q. Do you remember the day of the month in September that Mr. Cornell made his proof?

A. No, sir.

Q. Was it the first part of the month or the last part? A. I wouldn't say as to that.

Q. Now, what paper was it that you read that Mr. Cornell made his proof in September, 1903?

A. I wouldn't say as to that. I read several papers.

Q. You have never seen it—the proof papers themselves, have you? A. No, sir.

Q. Nobody ever told you, except that you read it in some newspaper?

A. I wouldn't say whether anybody ever told me or not. My recollection now is that I got it from the newspaper reports of the February trial in Boise.

Q. And that is the only way you have of fixing it—the date?

A. Well, that is the way I fix it in August or September. He came up here tolerably well along in the summer of 1903, and that, together with the date—the fact of his proving up in September—is the way I put it in August or September.

Q. Now, at the trial of Kester, Kettenbach and Dwyer had at Moscow in the spring of 1907, you were a witness for the defendants then, were you not?

A. Yes, sir. [2738—2408]

Q. And it was during that trial that you learned that the witness Cornell, who appeared there on behalf of the Government, was the same one that you had this conversation with which you have related?

(Testimony of William Schuldt.)

A. Yes, sir.

Q. You testified as to the good character of Clarence W. Robnett at that trial, did you not?

A. Not at that trial.

Mr. TANNAHILL.—We object to it as incompetent, irrelevant and immaterial, and not cross-examination.

Mr. GORDON.—Q. Not at that trial?

A. No, sir.

Q. Which trial did you testify at?

A. At Robnett's trial.

Q. That his reputation was good?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Just answer.

A. I testified, if I remember correctly, that at a certain time the question was asked me, that his reputation in Lewiston was good.

Q. Are you sure that you were asked at any certain time?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Now, wasn't the question whether or not you knew his general reputation?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. And that you said yes, and that you were further asked what it was, and you said it was good?

Mr. TANNAHILL.—The same objection.

WITNESS.—I have given that matter no thought, but my best recollection is that they asked me relative to Robnett's general reputation [2739—2409]

(Testimony of William Schuldt.)

in Lewiston at the time that he had these dealings with Ferris and Mrs. Harris, and so on and so forth; that is my recollection now; and I testified that it was good at that time.

Q. (Mr. GORDON.) Well, it was good up to the time of these trials, was it not?

Mr. TANNAHILL.—'The same objection.

WITNESS.—That was my impression.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. At that time Robnett had not admitted embezzling \$137,000.00 from the Lewiston National Bank, had he, Mr. Schuldt?

A. No, not to my knowledge.

Q. And he was not charged with embezzlement and falsification of records and forgery?

A. No, sir.

Q. And every other offense known to the law at that time, was he? A. No, sir.

Recross-examination.

(By Mr. GORDON.)

Q. He was charged with subornation of perjury, however, wasn't he? A. I think so, yes, sir.

Q. And he was convicted of it at that trial, wasn't he? A. I believe so.

Q. He has never confessed to you of having embezzled any money, has he? A. No, sir.

Mr. TANNAHILL.—Q. And that conviction was set aside by the Circuit Court of Appeals, was it not?

A. That is my information, yes, sir.

Q. And that case was afterwards dismissed by Mr.

(Testimony of William Schuldt.)

Gordon, because [2740—2410] they could not convict him of subornation of perjury again or some other reason which all of us don't know?

A. I presume so. - [2741—2411]

[Testimony of Ab. Masters, for Defendants.]

AB. MASTERS, a witness called on behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. Ab. Masters.

Q. Where do you live, Mr. Masters?

A. Lewiston, Idaho.

Q. How long have you lived in Lewiston?

A. Between twelve and thirteen years.

Q. What official position do you hold in Lewiston, Idaho, if any? A. Chief of police.

Q. Where did you live in the summer of 1903?

A. Lewiston, Idaho.

Q. What official position did you hold at that time, if any? A. Chief of police.

Q. Do you know Ivan R. Cornell? A. Yes.

Q. Did you know him in the summer of 1903?

A. I did.

Q. Did you know him in the month of August and September, 1903? A. Yes.

Q. I will ask you if you had a conversation with Ivan R. Cornell about August or September, 1903?

A. I had.

Q. Where did that conversation take place?

A. Lewiston, Idaho.

(Testimony of Ab. Masters.)

Q. I will ask you if you met Mr. Cornell at that time—Ivan R. Cornell,—a witness who testified in this case for the Government? A. If I met him?

[2742—2412]

Q. Yes, and if you stated to him that he wasn't doing anything in Lewiston, was laying around, and that you told him that you would vag him, or words in substance and to that effect, or would run him out of town?

Mr. GORDON.—I object to that on the ground that it is incompetent, irrelevant and immaterial, no proper foundation having been laid for the inquiry and the question is otherwise leading and suggestive and not an impeaching question.

The SPECIAL EXAMINER.—Answer the question.

Mr. TANNAHILL.—Answer it yes or no.

A. Yes.

Q. Did you at the same time and place, yourself, Ivan R. Cornell, and none others being present, have the following conversation: That you are doing nothing in Lewiston, laying around, that you would vag him or run him out of town, or words in substance and to that effect, and that Ivan R. Cornell stated to you, "I have filed on a timber claim and as soon as I can sell it I will be all right or will have money," or words in substance and to that effect?

Mr. GORDON.—The same objection; it is leading and suggestive.

The SPECIAL EXAMINER.—Answer the question.

(Testimony of Ab. Masters.)

A. Yes.

Mr. TANN AHILL.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Masters, when was this conversation you have related as having had with Mr. Cornell?

A. During the summer of 1903.

Q. Do you remember the day of the week it was, what day of the week it was? A. No, I don't.

Q. Where was this conversation you had with Mr. Cornell? [2743—2413]

A. It was on the streets of Lewiston.

Q. What part of the streets?

A. I couldn't tell you just where it was not. I remember the conversation well.

Q. Well, do you remember whether it was on one of the main streets or up on the hill?

A. It wasn't on the hill; it was downtown.

Q. Now, can't you fix any locality at all in the town where it was?

A. No, I can't, Mr. Gordon.

Q. What did you say to Mr. Cornell?

A. Just about as I stated there. I got after him because he wasn't working; he was begging around on the streets, and I told him he would have to do differently and go to work or get out of town.

Q. To whom did you tell this conversation that you had? A. Sir?

Q. To whom did you tell this conversation?

A. I told Mr. Cornell.

Q. I know, but now that was sometime in 1903.

(Testimony of Ab. Masters.)

You have repeated that conversation to somebody since then, have you not? A. I possibly have.

Q. Do you remember to whom you have repeated it? A. I was talking to Mr. Schuldt about it.

Q. When was that that you talked to Mr. Schuldt?

A. Oh, I couldn't say; perhaps a year ago.

Q. Just about a year ago? You never had thought of it since then? It never occurred to you since then until that time?

A. Well, I might have spoken about it before that; I don't remember.

Q. Had you spoken to one of the defendants prior to a year ago?

A. No, I hadn't, I am quite sure.

Q. And you think this conversation that you repeated, the conversation, that you referred to it to Schuldt about a year ago? [2744—2414]

A. Something like that, perhaps less than a year ago.

Q. What was your employment in 1903, Mr. Masters? A. My employment?

Q. Yes. A. Chief of police.

Q. And have you been chief of police ever since then? A. No, sir.

Q. What years were you out of office?

A. Well, I would have to study a little while. It was 1906, 7 and 8, I believe. I would have to figure that out, to be positive. Or part of those years. I quit the office in July and I went back in in July. It was just three years I was out.

Q. Did Mr. Cornell, in that conversation, tell you

(Testimony of Ab. Masters.)

that he was a friend of Mr. Kester's?

A. Yes, he told me that he knew Mr. Kester, that he had gone to school with him.

Q. And did you go to see Mr. Kester to find out whether he was telling you the truth or not at that time?

A. Mr. Kester spoke to me about it. I don't remember whether I went to see him or whether he saw me, but he told me he had known Cornell and went to school with him, and at that time Cornell seemed to be all right.

Q. When was that? Was that before this?

A. That was after I had talked with Cornell. He tried to get Mr. Kester to intercede for him, as I understand.

Q. Who did you get that information from?

A. Well, Mr. Kester. I understood from the way he spoke that was what Cornell—

Q. That was the same summer, wasn't it?

A. Yes.

Q. Did you tell Mr. Kester then that you had started to run [2745—2415] Cornell out of town?

A. Yes.

Q. Did you tell him what Cornell had said to you?

A. I don't remember now. No, I don't think so. I am not positive about that, whether I did or not.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [2746—2416]

[Testimony of C. W. Colby, for Defendants.]

C. W. COLBY, a witness called on behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. C. W. Colby.

Q. What is your age? A. Sixty years.

Q. Where do you live, Mr. Colby?

A. In Culdesac.

Q. What is your business?

A. I am engaged in farming in a small way just now.

Q. Did you ever live in Lewiston? A. Yes, sir.

Q. During what periods of time did you live in Lewiston?

A. About twelve years, up to 1908; I think I left then.

Q. Are you acquainted with Fred W. Emory?

A. Yes, sir.

Q. Have you ever been associated with him or employed by him in any way? A. I have.

Q. In what way?

A. I was a locator for the firm of Small & Emory.

Q. How long did you hold that position?

A. Twelve years—no, about ten years.

Q. Are you acquainted with the defendants George H. Kester and William F. Kettenbach?

A. I am, yes, sir.

Q. How long have you known them?

A. About thirteen years, I think. [2747—2417]

(Testimony of C. W. Colby.)

Q. Are you acquainted with William Dwyer?

A. Yes, sir.

Q. How long have you known him?

A. Well, a little less than that—since he came to Lewiston; I think perhaps a couple of years less,—ten years perhaps.

Q. Do you know Charles Dent, Lon Bishop and Charles Smith, and these other entrymen who filed on timber claims for whom you had something to do with getting the money for them? A. I do.

Q. Do you remember by whom they were located on these lands? A. By Mr. Emory, Fred Emory.

Q. The Fred Emory by whom you was employed at that time? A. Yes, sir.

Q. Do you know when they were located, the year? Was it in 1903 or 1904?

Mr. GORDON.—We object to that as leading.

A. 1903—I wouldn't be sure about those dates.

Mr. TANNAHILL.—Q. Do you remember the circumstances of their making their final proof?

A. Yes, sir.

Q. State whether or not you had anything to do with assisting them to get the money to make their final proof? A. I did.

Q. Now, what is the first thing you remember in relation to the location of these men on these lands,—just give the entire transactions as you remember it.

A. Well, these entrymen were in the employ, had been for some time in the employ of Small & Emory, except perhaps Mr. Dent, who wasn't [2748—2418] particularly employed by them, but had considerable

(Testimony of C. W. Colby.)

doings—he kept a house at which they stopped in going and coming, and also kept some goods, and they got goods from him in going and coming from Lewiston to the timber, and these—there was a good deal of talk about taking up timber, and these parties concluded that they wanted some, and Mr. Emory had been engaged in locating parties on timber, had made a business of it, and finally located them on timber. and I think Mr. Emory spoke to me about money matters before they were located, saying that they hadn't the funds to prove up with, and asked me my opinion as to whether there would be any trouble in getting a loan to prove up with, and I told him I thought not, if they got good claims. So the time came then approaching the time to prove up, and I had spoken to a party by the name of Skinner, asked him if he could make a loan to these parties on timber, and he said he thought he could, that he had a friend coming from the east, or from somewheres, that had money to loan, and he thought there would be no trouble about making this loan, and I let it rest there until a few days before proving up time, and asked Mr. Skinner if he would be prepared to furnish that money, and he said his man hadn't come, or something was in the way at least, and he thought it might be doubtful. I think I spoke to Mr. Guernsey, of Guernsey & Newton, next, and I think that was only a day or two,—I think it was Sunday—no, it was Saturday, and the proving up, I think perhaps they proved up Monday, but I am not quite certain as to dates, and he said he would talk with Mr. Newton about it and let

(Testimony of C. W. Colby.)

me know next morning. So I went down to the Grand Hotel, where I was stopping, and he advised me that he had decided not to make any loans on timber. I next spoke to Mr. Drissell about it—he had some money—and his reply was that if he had time to go and look at the timber he would make the loan if it suited him, and there was no time, because that was Monday morning, I think, and they was going to prove up right away, and he had no time to [2749—2419] go and look at the timber, and I went and saw Mr. W. F. Kettenbach.

Q. The defendant?

A. Yes, sir. And asked him for a loan of this money to prove up with, and I think he said he would speak to Mr. Kester about it and let me know in a short time, or perhaps let me know in the morning; anyway it was only a short time he asked to give me an answer. And when I saw him again he said that he wanted to know who knew about that timber, about the value of it, and I told him that Mr. Emory did, that Emory had located the parties on this timber, and he asked me if Mr. Emory was in town, and I told him he was, and he said he would like to see him, and I saw Mr. Emory and told him Mr. Kettenbach would like to talk to him, and he went into the bank and saw Mr. Kettenbach, and I went in after Mr. Emory came out shortly, and he said he would loan the money for six months. And I advised Mr. Emory and the boys, and they went ahead and filed on it.

Mr. GORDON.—Do you mean filed or made proof?

(Testimony of C. W. Colby.)

A. I mean made proof, yes, sir; excuse me.

When they were ready for the money I got the money from the bank and handed it to them, and they went and made their proof.

Mr. TANNAHILL.—Q. Then, what happened after they made their proof?

A. Well, Mr. Kettenbach says, “Now,” he says, “I look to you Mr. Colby, to get those mortgages and see that this thing is all straight,” and so I waited around until they made their proof, and when they did I asked them to come up into Mr. Barnett’s office—I went up into Barnett’s office before this and told him that the boys were making proof and I would like to have them give a mortgage, and told him I would like to have him remain in his office—it was getting late in the evening then, and I wanted him to remain there to fix up those mortgages, and he said that he would, and he did. Then after they had [2750—2420] all proved up I stood there by the foot of the stairs—I think his office was over the Beehive Store, and the boys seemed to be holding a conversation amongst themselves, and perhaps Mr. Emory, I don’t know, At least it wasn’t with me. And I got anxious to get the transaction closed up. Emory come and says, “The boys want to sell instead of giving a mortgage; they say they will have the same trouble about meeting the mortgage that they are having now, and prefer to sell, if they think they can get a reasonable price,” and asked me if I thought Mr. Kettenbach would buy it, and I says, “I think not; it is so soon after proving up, but,”

(Testimony of C. W. Colby.)

I says, "I will go and see him." I went and saw Mr. Kettenbach, and he says, "Have they proved up?" And I says, "Yes, sir." "Have they got their final receipts?" I says, "Yes, sir," "Well," he says, "It is as much theirs as it will ever be," and he says, "Yes, I will buy them if I can get them right," and he says, "What will they cost?" And I says, "They will average about \$750.00 or a little less, some more." "Well," he says, "I will see Mr. Kester about it and let you know in a little while," and I saw him again and he says, "We will take them if they don't cost any more than \$750.00." So I then told Mr. Emory that Mr. Kettenbach would buy them, and what he would give, and Mr. Emory seemed to understand by that time what the boys wanted for them, and instead of making mortgages they made deeds.

Q. Do you remember anything else that occurred?

A. Well, I guess that was about the end of it.

Q. I will ask you, Mr. Colby, if you are acquainted with Clarence W. Robnett.

A. Yes, sir.

Q. How long have you known him?

A. Oh, twelve years, I guess, or about that long.

Q. I will ask you if Mr. Robnett was present at any of these conversations. [2751—2421]

A. No, sir, he was not.

Q. I will ask you, Mr. Colby, if at this first conversation which took place between you—well, I will ask you who you first talked to about these transactions. I understood you to say Mr. Kester. Is that right?

A. You mean who of the defendants?

(Testimony of C. W. Colby.)

Q. Yes.

A. Mr. Kettenbach. Did I say Kester? I never talked with Kester about it at all.

Q. You never talked to Kester about it at all?

A. Talked to Mr. Kettenbach.

Q. I will ask you if in this first conversation, or in any conversation, you came into the main body of the bank, the main body of the working-room of the bank, at Mr. Kester's desk, or into Mr. Kettenbach's private office and around to Kester's desk, where he (Mr. Kester) was sitting, and pulled a chair up there and sat down right beside him and spoke to Mr. Kester and said, "George, I came in to talk to you in regards to the timber matters," "He says" (meaning Mr. Kester). And did you state to Mr. Kester, "Fred Emory last winter cruised out some claims in 39-3, and we located six men on them this spring, and we are to furnish them with money and all expenses to prove up, and are to pay them \$200.00 for their right. Now, we have fallen down on being able to get this money." And did you ask him if he could go ahead and take this up, under the same arrangement, and take care of these parties?

Mr. GORDON.—Objected to on the ground that it is leading and suggestive, and not a proper way to examine his own witness.

A. No, sir, there was never any such conversation whatever, nothing of the kind. [2752—2422]

Mr. TANNAHILL.—Q. I will ask you if, at the same time, or any other time, you stated to Mr. Kes-

(Testimony of C. W. Colby.)

ter, or anyone else, what the entrymen were to do, or that they were to go ahead and prove up and deed the claims over to Colby & Emory, meaning yourself and Mr. Emory, for \$200.00 each?

Mr. GORDON.—Objected to on the ground that it is leading and suggestive.

A. No, sir, there was nothing of that kind, nothing suggesting any such thing in the conversation as that at all.

Mr. TANNAHILL.—Q. State whether or not you made any statement to Mr. Kester at that time or any other time when you went there that if Kester and Kettenbach went in and took care of the entrymen under the same conditions and terms that you had with them that they would deed the claims over to them after proof, and they were to receive \$200.00 per claim, or did Mr. Kester say, “Well, I will take it up with Mr. Kettenbach when he comes in and will let you know later.” Did any such conversation as that occur?

Mr. GORDON.—Objected to as suggestive and leading.

A. No, that whole conversation as related there is absolutely false from beginning to end. There was not a syllable of anything of the kind ever occurred. I never talked to Mr. Kester one moment about it, not one word.

Mr. TANNAHILL.—Q. I will ask you if, at the same time or any other time, you stated to Mr. Kester, “Fred Emory cruised out some timber last winter in 39-3, and we have located six parties on

(Testimony of C. W. Colby.)

that timber, with the understanding that we were to take care of them and pay their expenses and give them \$200.00 and them deed the claims over to them after proof.”

Mr. GORDON.—Objected to as leading and suggestive.

Mr. TANNAHILL.—Q. Did any such conversation as that occur? [2753—2423]

A. No, sir.

Q. State whether or not there was anything said in that conversation about for whom those men had been or were working, or did you state to Mr. Kester that they were all right, or that they were working for you, or words in substance and to that effect?

Mr. GORDON.—Objected to as suggestive and leading.

A. No, sir, I never had any such conversation.

Mr. TANNAHILL.—Q. Did you have any such conversation as that with Mr. Kettenbach?

A. No, sir.

Q. Or did you have any of these conversations that I have repeated here with Mr. Kettenbach?

A. Not other than as I have stated.

Q. Just what you stated on your direct examination? A. Yes, sir.

Q. I will ask you if at that same time Mr. Kester told you that he would take the matter up with Mr. Kettenbach as soon as he came in and would let you know just what they would do, and did he also say, “Are you sure that Fred knows all about these claims,” and did you say, “Yes, he does, and

(Testimony of C. W. Colby.)

you know that Fred is well posted on timber," and did Mr. Kester say, "Yes," and he says, "You come in this morning or to-morrow and I will let you know what we will do. I will take it up with Mr. Kettenbach." Did you have any such conversation as that?

Mr. GORDON.—The same objection, suggestive and leading.

A. No, sir.

Mr. TANNAHILL.—Q. I will ask you if on the next morning you and Mr. Emory went into Mr. Kettenbach's private office and talked the matter over, and did Mr. Emory say to Mr. Kettenbach that he checked those claims over and he [2754—2424] knew they were the best claims in that whole township that was subject to filing, and did Mr. Kester tell you that they would go ahead and furnish the money for the proof and take the claims, under the same conditions that you had with the entrymen, to pay them \$200.00 for their rights?

Mr. GORDON.—Objected to as leading.

A. No, sir, there was no such conversation. Mr. Emory never was with me when I even talked to Mr. Kettenbach,

Mr. TANNAHILL.—Q. Mr. Colby, do you remember the names of the entrymen?

A. Do you want me to give them?

Q. Yes, if you can without referring to the record.

A. James Evans, Lon Bishop, Charlie Smith, Charlie Dent, Fred Newman, and Ben. Clute.

Q. I will ask you if Mr. Kester told you to come

(Testimony of C. W. Colby.)

in when the time came for proof and he would give them the money, or give you the money?

Mr. GORDON.—Objected to as leading.

A. No, sir; no such conversation.

Mr. TANNAHILL.—Q. I will ask you if at the time of the making of the proof you was in Mr. Kettenbach's private office, and Mr. Kester called Clarence W. Robnett into Will. Kettenbach's private office and told him to bring in some money, and that Mr. Robnett did bring in twenty-four or twenty-five hundred dollars in currency, and did you hear Mr. Kester tell him to make a cash item in the cash for the money?

Mr. GORDON.—Objected to as leading.

A. No, sir, there was nothing of that kind.

Mr. TANNAHILL.—Q. I will ask you, Mr. Colby, if you had a conversation with Mr. Kester or Mr. Kettenbach, or either of them, either prior to the time of the entrymen filing, or subsequent thereto, or at any other time, [2755—2425] in which you told Mr. Kester or Mr. Kettenbach, or either of them, that Mr. Emory had cruised the timber out and then got these parties to file under that agreement, meaning the agreement that you was to give them \$200.00 for their right?

Mr. GORDON.—Objected to as leading.

A. No, sir, there was nothing of the kind.

Mr. TANNAHILL.—Q. I will ask you if at any time, yourself, Mr. Emory, Mr. Kettenbach and Mr. Kester had a conversation regarding these claims in Mr. Kettenbach's private office.

(Testimony of C. W. Colby.)

Mr. GORDON.—Objected to as leading and suggestive.

A. No, sir, we did not.

Mr. TANNAHILL.—Q. I will ask you if the names of the entrymen were mentioned in any conversation you had with Mr. Kester or Mr. Kettenbach at the time that yourself and Emory and Kester and Kettenbach were present, all of you present.

Mr. GORDON.—Objected to as leading and suggestive.

A. No, sir, there was no conversation.

Mr. GORDON.—Will you let the motion that the answer be stricken out go to all of these answers?

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Colby, I understood you to say that Mr. Emory spoke with you before these six entrymen you have mentioned made their original filing, or their application to file, relative to getting the money for them to make proof, is that correct?

A. Yes, sir. [2756—2426]

Q. Was that before he had shown them the timber that he asked you if you could get the money for them to make proof?

A. Well, I couldn't say.

Q. Well, when was it that he spoke to you about their getting the money to make proof, what year was it?

A. Well, I suppose it was the same year that they filed in.

Q. Well, what year was that?

(Testimony of C. W. Colby.)

A. Well, as I said before, I am not positive about those dates; it was a long time ago, but I think it was 1903.

Q. And how much money did you get from Mr. Kettenbach for these gentlemen to make their proof?

A. I think I handed them \$420.00.

Q. Apiece? A. Yes, sir.

Q. How much money did you get from Mr. Kettenbach? A. I got all of it from him.

Q. Twenty-five hundred and some odd dollars, was it?

A. I don't know; there was six of them.

Q. Well, six times four hundred and twenty is 2520. Is that the amount you got from Mr. Kettenbach?

A. Yes, sir, I guess it must be. I didn't get it all at once though. Mr. Robnett there seems to have stated that he brought in \$2500.00. It didn't all come in at once.

Q. Did they all get it the same day?

A. No, sir, they did not.

Q. Now, which ones came first to get the money?

A. I think that Mr. Dent and Charlie Smith were the two that proved up last—four of them, the other four.

Q. They proved up last?

A. I think so. [2757—2427]

Q. And were they down the same day the other four were?

A. I suppose not, was the reason they didn't prove up that day.

(Testimony of C. W. Colby.)

Q. Well, now, did Bishop and Evans and Clute and Newman all make their proof the same day?

A. I think so; there was four made their proof that day, and I think it was those four.

Q. And you got the money for them that day, did you, that they made their proof with?

A. Yes, sir.

Q. Now, did the other two that you have mentioned, Smith and Dent, make their proof the same day? A. No, sir, they did not.

Q. Sir? A. They did not.

Q. Well, when did they make theirs? They made theirs separately too, didn't they? A. I think so.

Q. Then there were three times that you went to the bank to get the money for proof, is that correct?

A. Twice; four at once and the other time two.

Q. The two that proved up together, did they make proof at the same time?

A. My recollection is that they did. I don't know for sure; I think so though.

Q. How many times did you talk with either Kester or Kettenbach relative to them purchasing these claims?

A. Just once to Mr. Kettenbach; I never talked to Mr. Kester.

Q. Did you sell the six claims at the same time?

A. Well, made the arrangements for ~~all six~~, but I think that two were two days later in proving up, so that they come under the same arrangement with Mr. Kettenbach, but didn't complete the transaction all [2758—2428] at one setting.

(Testimony of C. W. Colby.)

Q. You made arrangements for all six at the same time, is that correct?

A. I told him there were six; yes, sir.

Q. And two of them hadn't made proof at that time, as I understand? A. No.

Q. Now, which two was it that you made the arrangement to sell to Mr. Kettenbach before they had made proof? Was that Smith and Dent?

A. I don't know as I made the arrangements to sell; it was for borrowing the money then. I arranged to borrow the money for all six of them at once.

Q. Well, now, my question was though how many conversations did you have with Mr. Kettenbach relative to selling these six claims?

A. Well, I suppose I must have seen him twice, because he purchased the four claims after the four had proved up.

Q. Now, have you any distinct recollection of talking to him twice about these claims?

A. Well, then I saw him again after the other boys proved up, after Dent and Smith proved up.

Q. What did you say about them?

A. I asked him if he would take them, that is all.

Q. What did he say? A. He said he would.

Q. Now, was that all that was said?

A. I guess so; that is—

Q. And each one of the six entrymen you mentioned, you gave each one of them, the day they made their proof, four hundred and some odd dollars that they required to make the proof with, is

(Testimony of C. W. Colby.)

that correct? A. Yes, sir.

Q. And you got that money that you gave each one of them from [2759—2429] Mr. Kettenbach?

A. I got it from the bank.

Q. Well, how did you get it from the bank?

A. Well, I am not quite positive; I think that Mr. Kettenbach told me to draw a check on the bank and he would protect it.

Q. Is that the way the transaction occurred?

A. I think so. I got the gold; it was all in twenty dollar pieces.

Q. Now, who gave you the money?

A. Well, it was whoever was at the window at the bank, the cashier's window.

Q. Who was at the window?

A. I don't remember.

Q. Was Mr. Robnett there?

A. No, he hardly ever was at the window.

Q. Was Mr. Kester there?

A. It might have been Kester, and it might have been someone else.

Q. You were borrowing this money from Mr. Kettenbach, weren't you?

A. I was arranging as a sort of an agent, you might call it, between him and the parties that were borrowing it; I was to get these mortgages and return them to him just as soon as they could be got.

Q. And you drew your personal check on the bank for that amount, did you?

A. I rather think that is the way it came.

Q. And did you do that on both occasions?

(Testimony of C. W. Colby.)

A. I don't remember so much about the last occasion, just how that was handled.

Q. Then your check on the first occasion would be for \$1680.00, is that correct, if you got \$420.00 for each one? [2760—2430]

A. I presume that was the amount.

Q. Have you that check now? A. No, sir.

Q. Do you know what became of it?

A. I handed it into the bank and got the money.

Q. I know, but didn't they give it back to you at all? A. I don't think so.

Q. Now, when was the first conversation you had with Mr. Kettenbach about getting money for these entrymen to make their proof, relative to the time that they did make proof?

A. Well, when—it was the same day that they made their proof. It might have been the night before, the night before the day they made their proof, but I didn't get the money until the day they made their proof.

Q. Where did you have this conversation with Mr. Kettenbach? A. In his private office.

Q. In the Lewiston National Bank?

A. Yes, sir.

Q. And if it was the night before, then you went to the bank the next day, did you?

A. My recollection is that my conversation with Mr. Kettenbach was all the same day that they proved up.

Q. And do you remember what time of the day it was that the four entrymen made their proof?

(Testimony of C. W. Colby.)

A. Well, it was in the afternoon.

Q. And did you go to the land office with them?

A. No, sir.

Q. Did Mr. Emory come downtown with you the day that they made their proof? A. Yes, sir.

Q. Did the entrymen come along at that time?
[2761—2431]

A. Come from where? They were in town.

Q. I know, but did you have an appointment to meet them, or did you meet them?

A. I met them, yes, sir.

Q. Where did you meet them?

A. Met them on the street downtown.

Q. Well, what part of the street?

A. Well, I handed them the money near the bank, out in, perhaps in the street in front of the bank, somewheres in that neighborhood.

Q. Now, you had an appointment to meet them that day, didn't you?

A. Well, of course, I don't know as I had any appointment with them. My business was with Mr. Emory. I hadn't had very much talk with those men.

Q. You had an appointment to meet Mr. Emory to get these entrymen the money?

A. I don't know as I had any appointment with Mr. Emory. I was working for Mr. Emory and I presume we went downtown together in the morning.

Q. Did the entrymen come downtown with you?

A. I suppose they were downtown. No, they didn't come down with us.

Q. And the four of them met you in front of the

(Testimony of C. W. Colby.)

bank and you gave them the money there, is that correct?

A. That is where I gave them the money, yes, sir.

Q. Which four were they that you were to meet?

A. Why, Evans, Clute, Bishop and Newman, I think. I think those were the ones that proved up the first day.

Q. You say that was after dinner in the afternoon?

A. I think it was, yes, sir. I know it was towards night when they got done proving up. [2762—2432]

Q. Did you wait around for them to make their proof before you took them over to Mr. Barnett's office to make the mortgage? A. Certainly.

Q. Where did you wait, do you remember?

A. Why, on the street somewheres, around town somewheres.

Q. And you met them again in front of Mr. Barnett's office in front of the Beehive Store?

A. Yes, sir.

Q. Was Mr. Emory with the four of them then?

A. Yes, sir.

Q. State what happened when you saw Mr. Emory and the four entrymen together again.

A. Why, I was anxious to have them come up and give their mortgage and get the transaction over with, and I waited a little apart from them, and they seemed to be talking, off at the edge of the sidewalk, and I think I was standing at the foot of the stairs, or near there, and I was anxious for them to come on and go up stairs with me, and they kept waiting,

(Testimony of C. W. Colby.)

and finally Emory came over and said they wanted to sell.

Q. Who said that? A. Mr. Emory.

Q. Were you waiting there for them, and they came over from the land office and met you in front of the Beehive Store, is that correct?

A. They didn't all come out of the land office at once, I don't suppose. I presume they proved up one at a time; I don't remember about that, but there wasn't anything done until they all got out, I know.

Q. I mean did Mr. Emory come up to you with the other four and make that statement? [2763—2433]

A. Mr. Emory, I said, came to me.

Q. And he said the entrymen wanted to sell?

A. Yes, sir.

Q. What else did he say?

A. He wanted to know if I thought Mr. Kettenbach would buy them, and I told him I thought not, but I would go and see him.

Q. Was anything said about the price then that they wanted for this? A. Yes, sir.

Q. How much did they say they wanted?

A. Emory told me it would average about \$750.00; he said Evans wanted more, but the average would be about \$750.00.

Q. And you went over to the bank again to see Mr. Kettenbach, is that correct?

A. I think I saw Mr. Kettenbach immediately, and I think it was in the bank, but I am not so sure about where I met him at that time, but I think it was in the bank.

(Testimony of C. W. Colby.)

Q. You were only about fifty yards from the bank at that time, weren't you? Wasn't the Beehive Store directly opposite, across the street?

A. Not exactly, but practically, diagonally across the street.

Q. I mean they are both in the same block, one on the opposite side of the block? A. Yes, sir.

Q. What did you say to Mr. Kettenbach?

A. I told him that those parties wanted to sell instead of giving a mortgage, and I said, "I don't suppose you would buy it, would you, so soon after proving up," and he says, "Have they proved up?" And I says, "Yes, sir," and he says, "Have they got their [2764—2434] final receipts?" And I says, "Yes, they have," and he says, "I guess it is theirs as much as it ever will be."

Q. What else did he say?

A. He said he would buy them if I could get them right. And I told him the price would average about \$750.00, and I think he said he would see Mr. Kester and would let me know, and Kester was around there somewheres.

Q. Did you go out of the bank, or did you wait there for him to see Kester?

A. I don't recollect about that. I know it was only a short time that he told me he would take them if they wouldn't cost more than \$750.00.

Q. Was anything said about the value of the timber on these claims?

A. Not at that time. They had taken that matter up when they talked of loaning the money.

(Testimony of C. W. Colby.)

Q. And you went back to where these gentlemen were, the entrymen and Mr. Emory, and told them that Mr. Kettenbach would purchase the claims if they didn't go over \$750.00 apiece, is that right?

A. Well, I told Mr. Emory. I don't remember whether I talked to the men about it at all or not.

Q. Weren't the men there?

A. They was in the neighborhood, that is, they was immediately there, but I don't know that they overheard what I said to Emory.

Q. Then, you went up to Mr. Barnett's office and had the deeds made out? A. Yes, sir.

Q. Did you take the deeds over to the bank?

A. I don't think I did that night; it was pretty late then.

Q. Well, did you take them over the next day?
[2765—2435] A. Yes.

Q. How were these men paid?

A. I am not quite sure, but I am under the impression that I gave them checks, but I am not sure about that.

Q. You are not sure about that? A. No, sir.

Q. Now, do you remember whether you took out the \$400.00 and some odd dollars that you had advanced them, and paid them the balance?

A. Yes, sir, took that out.

Q. In other words, whatever you gave them was the difference between what you had advanced them and the amount that their claims were to cost?

A. Yes, sir.

Q. Now, do you know how much you gave Mr. Lon

(Testimony of C. W. Colby.)

Bishop for his claim?

A. No, I don't recollect. About the only recollection I have is that Mr. Evans' claim cost more than the rest of them, but I don't recollect what the other figures were.

Q. Now, was it your personal check that you gave these gentlemen for their claims?

A. You mean in the final settlement?

Q. Yes.

A. I couldn't say. Now I have done business with Mr. Kettenbach a few times, and I recollect at one time he told me to draw a check and sign his name by me. I did so. And I don't recollect how this was paid, this balance.

Q. You don't know whether you drew a check on that occasion and signed Mr. Kettenbach's name to it by you or not, do you?

A. I don't recollect. I don't recollect how that balance was paid now. [2766—2436]

Q. Now, do you remember how much you gave each entryman? A. No, sir.

Q. Haven't you any idea how much you gave each entryman?

A. I have just got this general idea that the claims cost \$750.00 on an average.

Q. And you don't know whether you gave them \$100.00 apiece or \$200.00 apiece or \$300.00 apiece, do you?

A. Well, I don't think any of them was as small as \$200.00.

(Testimony of C. W. Colby.)

Q. Did you buy Mr. Smith's claim, Charles Smith's claim?

A. I think so. It was in the same arrangement. The Smith and Dent came in afterwards, and I haven't so clear a recollection about that, because the trouble I was having was to borrow this money. I had given these parties to understand that we would be able to borrow money for them to prove up with. After we had made that arrangement I didn't give a snap whether they sold out or didn't sell out. I was interested in getting them the money to prove up with. The balance I wasn't particularly interested in, and I don't know just the particulars about that.

Q. You haven't any distinct recollection of arranging for the sale of Mr. Dent's and Mr. Smith's claim?

A. Why, I haven't any particular recollection only that it was sold.

Q. Did you negotiate the sale?

A. Why, I think so, but I negotiated the arrangement for the loan, and I don't know so much about that sale.

Q. You don't remember negotiating for the sale of those two claims?

A. I can't say whether—I don't seem to have any recollection about that. I know they were sold to Kester and Kettenbach, but I don't—I can't recall to my mind just how that transaction was carried out. I have more particular recollection about making the arrangements for the [2767—2437] loan and the first four claims that they fixed up that day.

(Testimony of C. W. Colby.)

Q. When you went to Mr. Kettenbach to borrow the money for these six entrymen to make proof, what did you say to Mr. Kettenbach?

A. I told him there was six parties had filed on timber claims and that they were wanting to prove up and wanted to borrow the money.

Q. What else was said? Where was this conversation?

A. That was in his private office in the bank.

Q. Now, what else was said at that conversation?

A. He asked me if I knew the timber, if I had seen it, or something to that effect, and I told him I had not, and he wanted to know who had, and I told him Mr. Emory had, and I thought the timber was good or he wouldn't be locating them on it, and he asked if Emory was in town, and I told him he was, and he said he would like to see him, and I saw Mr. Emory and he went in and saw him.

Q. Where were you when Mr. Emory went to see Mr. Kettenbach?

A. I suppose I was on the street in front of the bank, somewheres around in that neighborhood.

Q. And you waited until after the conference between Mr. Emory and Mr. Kettenbach, waiting for the final answer of Mr. Kettenbach? A. Yes, sir.

Q. And after Mr. Kettenbach had talked this matter over with Mr. Emory, did you go back into his office? A. Yes, sir.

Q. And then it was that he told you that he would let you have the money?

A. Yes, sir. At one time he said he would see Mr.

(Testimony of C. W. Colby.)

Kester about it. I don't know whether that was after he had seen Mr. Emory or not, but I think it was before.

Q. And he also said that he would see Mr. Kester about purchasing these claims too, did he not? I don't mean at that conversation; I mean at a later one. [2768—2438]

A. Why, I think so. I recollect his saying he would see Mr. Kester about it, but I don't remember whether that was at the time we was talking about making the purchase or the loan; I think that referred to the purchase more particularly. As I recollect it, the loans was going to be made by Mr. Kettenbach, but I am not so sure about that. I know that he wanted to see Mr. Kester about it anyway, but whether it was about both those transactions or only about the purchase I am not positive.

Q. Are you sure you didn't make arrangements to sell the six claims all at the same time?

A. Oh, no, I didn't make arrangements to sell the six; I made arrangements to borrow the money all at the same time.

Q. How long after the first four were sold was it that you made arrangements to sell the other two?

A. As I stated, I don't remember now how many days it was, but I think it was a few days after the others had proved up that the last two proved up, and, as I stated, my memory isn't very clear as to the later transaction.

Q. Now, were they to give a mortgage too?

A. Oh, yes.

(Testimony of C. W. Colby.)

Q. The other two? A. Yes, sir.

Q. And after they had made proof they changed their minds and said they also wanted to sell, is that correct?

A. I guess so. As I stated, I am not clear about those last two; I am not clear as to how long it was after the others proved up. I know there was four, and I think I got the money for the four at once, and I know that that is right, and just when the others proved up I don't recollect, but I think it was a few days later. [2769—2439]

Q. Whenever it was, you got the money the same way?

A. The same way. I made the arrangements for the six claims all at the same time.

Q. And you got the money always from the bank?

A. Well, I got that first, as I told you, on that check, and just how I got the other I don't recollect. I got it from the bank; I got it at the window at the bank, the cashier's window.

Q. Do you remember who you made the settlement with for the last two claims, the Dent and Smith claims? A. No, I don't.

Q. Didn't you settle that with Kettenbach, or did you have that settlement with Kester?

A. I don't think I ever had anything to do with Kester about it at all.

Q. Then you made the settlement with Mr. Kettenbach? A. I suppose so.

Q. You told Mr. Kettenbach that Mr. Emory knew

(Testimony of C. W. Colby.)

all about these claims, as he had located these people on them?

A. I presume I did. I might have got mixed a little in a question that you asked me a good ways back, about selling the last two claims. You asked me, I think, if I arranged for selling the six claims, or something of that kind. I didn't know that the other two parties wanted to sell; I didn't know anything about them. I didn't suppose any of them would want to sell, until after they proved up, and I didn't know that the other two that was going to prove up later would want to sell, or anything about it.

Q. You say that Mr. Robnett was not present at any of these conversations. You don't know whether or not Mr. Robnett was about the bank at that time, do you?

A. He was at the bookkeeper's desk over on the further side, [2770—2440] diagonally across the bank.

Q. I say you don't know whether he was about the bank at any of these conversations? A. No, sir.

Q. You mean he wasn't in the room with you and Mr. Kettenbach? A. Yes, sir, he wasn't there.

Q. Now, did you ever have any conversation at all with Mr. Kester about the money to make proof for these entrymen, or about the sale of it?

A. No, sir.

Q. Never? A. No.

Q. When Mr. Emory first spoke with you about getting the money for these entrymen to make the proof he said that he wanted to get enough for them

(Testimony of C. W. Colby.)

to make proof for all of them, is that correct?

A. He asked me if I thought we would be able to borrow it; I suppose he meant all of them.

Q. And you went out to see a Mr. Skinner?

A. That was at the time just shortly before they did prove up. That wasn't before—

Q. That wasn't what?

A. That wasn't before they filed. It was about the time they were to prove up that I saw Mr. Skinner; it was some time before that.

Q. But this talk you had with Mr. Emory was before they filed, I understand that, but where did you go to get the proof money first?

A. I went to Mr. Skinner.

Q. What did you say to Mr. Skinner?

A. I told him these parties had filed, and would want to borrow the [2771—2441] money to prove up with.

Q. And he told you he would let you have it?

A. He told me he thought he could.

Q. How much did you tell him you wanted?

A. I told him it would be something over four hundred dollars apiece.

Q. And then you went to see Mr. Guernsey, of Guernsey & Newton? A. Yes, sir.

Q. Did you tell him how much you wanted to borrow?

A. Certainly. I wouldn't go to a man without telling him how much I wanted.

Q. Did you tell him?

(Testimony of C. W. Colby.)

A. I told him I wanted \$400.00 for them to prove up with.

Q. For how many? Six people?

A. Six, yes, sir.

Q. Do you remember where you gave Mr. Smith and Mr. Dent the money with which to make proof?

A. No, I do not.

Q. You haven't any idea?

A. I don't seem to have any recollection about it.

Q. Do you know how much Evans received for his claim?

A. Why, my impression is that he received \$800.00 or more, but I don't know the exact amount.

Q. And you had the settlement in Mr. Barnett's office, did you not, with them? A. Yes, sir.

Q. Do you remember how much you gave Mr. Dent for his claim? A. No, I do not.

Q. Don't you remember that it was \$200.00?

A. I don't recollect. [2772—2442]

Q. Do you remember me asking you that at the trial had at Boise in February, Mr. Colby?

A. I know we went over this whole proposition, but the particular question I don't recollect.

Q. Do you remember me asking you if you gave him, \$100.00 and you said no, that you gave him, you think it was \$200.00?

A. I might have said at least two hundred; I might have said two hundred, I don't know. As I said here at this trial, I didn't think any of them got as small as \$200.00. I was under the impression that \$650.00 was the least that any of them got, but I

(Testimony of C. W. Colby.)

might be mistaken.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Colby, did you have any conversation with Mr. Kester or Mr. Kettenbach in the interior of the bank building, that is, inside of the railing of the bank? A. No, sir.

Q. Your conversations were all in Mr. Kettenbach's private office? A. Yes, sir.

Mr. TANNAHILL.—That is all. [2773—2443]

[Testimony of Hiram F. Lewis, for Defendants.]

HIRAM F. LEWIS, a witness heretofore called and duly sworn, being recalled by the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?

A. Hiram F. Lewis.

Q. Where do you live, Mr. Lewis?

A. At Lewiston.

Q. Was you present at Boise in the month of February and March, 1910, when the defendants George H. Kester, William F. Kettenbach and William Dwyer were tried upon the charge of conspiracy to defraud the United States? A. Yes, sir.

Q. Was you a witness there at that time?

A. Yes, sir.

Q. Do you know Ivan R. Cornell? A. Yes, sir.

Q. Did you see him there at that time?

(Testimony of Hiram F. Lewis.)'

A. Yes, sir.

Q. He was a witness there, also, was he?

A. Yes, sir.

Q. I will ask you if in the month of February or March, 1910, or during the time of the trial of the case of the United States vs. Kester, Kettenbach and Dwyer, at Boise, Idaho, in the hall of the Government building where the court was being held, if you had a conversation with Ivan R. Cornell, in which he said to you (yourself and Ivan R. Cornell being present, and none others) that "these defendants are sons of bitches, and should be sent to the penitentiary," or words in substances and to that effect? A. Yes, sir. [2774—2444]

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Lewis, you say this was in the hall there leading to the courtroom? A. Yes, sir.

Q. And you say there was nobody present but you and Mr. Cornell? A. That was all at the time.

Q. What time of day was this?

A. It was in the forenoon; I have forgotten just exactly what time.

Q. And it was the hall that led right into the courtroom? A. Well, the main corridor.

Q. That is the main corridor? There is but one that leads in there, isn't there? A. Yes, sir.

Q. And do you mean to say that there was any time during that day—during that trial—that there was only you and Cornell in that hallway?

A. Well, there was others in the hallway, but we

(Testimony of Hiram F. Lewis.)

were talking together.

Q. Now, did he come up to you and make that statement?

A. Well, we were talking, and he made that statement.

Q. Now, what were you talking about?

A. Well, I made a common remark, that he was back here again on the case. "Well," I says, "how are things going?" and then he made that remark.

Q. And what did he say?

A. Well, he said the defendants were all sons of bitches, and ought to go to the pen.

Q. Was there anything that suggested that at all, only just talking about this?

A. Well, I made that remark is all. [2775—2445]

Q. You asked him how it was going?

A. I asked him how he thought it was going. That's all I said.

Q. And to whom did you tell that?

A. Well, I forget now. I think I told it to one of the defendants there afterwards.

Q. One of what defendants?

A. One of the other defendants; I forget who it was, first.

Q. Did you talk to Mr. Tannahill about it?

A. Yes, sir; I told Mr. Tannahill about it after.

Q. You told him the same day it happened, didn't you? A. No, sir.

Q. Did you tell him the next day?

A. No, sir. I think it was after I came home to Lewiston.

(Testimony of Hiram F. Lewis.)

Q. After what?

A. I think it was after I came home to Lewiston that I told him about it.

Q. Why, you testified down to Boise—

A. Well, that's right, too. It was the next day—that evening.

Q. You told him the same evening, then, didn't you? A. Yes, sir.

Q. And what was the occasion of you going to Mr. Tannahill and telling him that?

A. I don't know as there was any particular occasion.

Q. You were subpoenaed there as a witness for the Government on that occasion, weren't you?

A. Yes, sir.

Q. And you didn't tell me that Cornell said that, did you? A. No, sir.

Q. You went to the counsel for the defendants and told him; is that right?

A. Yes, sir. [2776—2446]

Q. Did you know who Cornell was at that time?

A. Yes, sir; I knew him for about four or five years.

Mr. GORDON.—That's all.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Lewis, I will ask you if you don't remember that I first asked you whether or not you had such a conversation as that?

A. Well, I forget, Mr. Tannahill, just how it came up, but I know I met you on the street afterwards,

(Testimony of Fred W. Emory.)

and we were talking, and I forget now just how it did come up, but I think, though, that you did ask me.

At this time a recess was taken until this afternoon at two o'clock. [2777—2447]

At two o'clock P. M. the hearing was resumed.

[**Testimony of Fred W. Emory, for Defendants.**]

FRED W. EMORY, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. Fred W. Emory.

Q. Where do you live, Mr. Emory?

A. Lewiston, Idaho.

Q. What is your business or occupation?

A. I am in the fuel business now.

Q. Do you hold any official position in the city of Lewiston at the present time?

A. Why, I am a City Councilman here.

Q. How long have you been City Councilman?

A. Why, I was first elected two years ago last July, and re-elected last July.

Mr. GORDON.—Speak a little louder, Mr. Emory, please.

WITNESS.—I was first elected Councilman two years ago last July.

Mr. TANNAHILL.—Q. How long have you lived in Lewiston? A. I think it is about 20 years.

Q. Are you acquainted with the defendants William F. Kettenbach, and George H. Kester?

(Testimony of Fred W. Emory.)

A. Yes, sir. [2778—2448]

Q. How long have you known them?

A. Well, 19 or 20 years.

Q. Are you acquainted with the defendants William Dwyer? A. Yes, sir.

Q. How long have you known him?

A. Why, I think about 12 years; I wouldn't be positive; ever since he came to the country here I have been acquainted with him.

Q. I will ask you, Mr. Emory, if you have ever been engaged in the timber business—locating people on timber claims? A. Yes, sir.

Q. When was you so engaged?

A. Oh, I located some, I think, in 1902 and 1903, and up to four years ago, more or less. I think it has been about three or four years since I have done any locating.

Q. Are you acquainted with James C. Evans?

A. Yes, sir.

Q. Did you ever have anything to do with locating him on a timber claim? A. I did, yes.

Q. Are you acquainted with Lon E. Bishop?

A. Yes.

Q. Frederick W. Neman? A. Yes.

Q. Charles Dent? A. Yes.

Q. Charles Smith? A. Yes.

Q. Are you acquainted with Ben Clute?

A. Yes.

Mr. GORDON.—Wait a minute, Tannahill: Ask him if the man you call Ben Clute is Joseph B. Clute.

(Testimony of Fred W. Emory.)

Mr. TANNAHILL.— [2779—2449] Q. Is that the man referred to in the bill as Joseph B. Clute?

A. I think it is, yes.

Q. Did you ever have anything to do with locating them on a timber claim? A. Locating who?

Q. These parties that I have named, on a timber claim? A. I did, yes, sir.

Q. Now, just state what occurred in relation to the location of these parties on timber claims?

A. Why, these parties were all men, except Dent, that has worked for us for a number of years off and on, for—well, for the past probably 15 years, Evans probably a good deal longer than that, and at this time they were working the biggest part of the time for us in the woods. We were in the lumber business.

Q. Go ahead.

A. And I was doing some locating off and on, as I had time to cruise some timber and parties were anxious to get located, why I would locate a few of them; and I was up in the woods one day, and they were there at one of the homesteader's cabins, in fact, Evans' homestead, and they got talking about timber claims, about me locating people, and wanted to know if there was anything left, and I told them about a bunch of timber there was there; that is, there was about four of them there, I think, at that time; and they wanted to know if I thought it was worth taking, and I told them I thought it was, and they talked the matter over there during the afternoon among them and concluded they wanted

(Testimony of Fred W. Emory.)

to get located, and wanted me to locate them, and I told them I would as soon as I had a little time. The next—I came down early then, and when I came back they were there, and I took them and went over the timber with them and located them.

Q. And what occurred next?

A. Well, they came down to Lewiston and made their filings; and after that a short time they told me that they would have to get money— [2780—2450] they would have to borrow money to prove up on these claims. Well, they wanted to know what I thought about it, and I told them I didn't think they would have any trouble in borrowing money; that there was lots of men in the country that was loaning money on the timber claims, enough to prove up on, and they told me to look out for somebody that would be apt to have some, as they didn't know as they would have enough, and I told them I would. Well, it run on for some time then, and I spoke to Mr. Colby, as he was our bookkeeper at that time, and asked him if he knew of anybody that would be liable to loan them boys what money they would need on those claims for proving up, and he said he didn't right then, but he thought probably he could find them, and I told him to look around and see who they was; and some time after that he told me that Mr. Skinner—I think it was W. H. Skinner, that used to be Mayor here, whatever his initials was—would loan them the money, but it proved—some short time before they got ready to prove up why Skinner's money didn't get there, and so there

(Testimony of Fred W. Emory.)

was no show to get it of him, and so I told him to see other parties, and he told me he would, and one day he said he was talking with Mr. Kester, I think, in regard to it,—

Q. Mr. Kester, or Mr. Kettenbach?

A. I wouldn't be sure whether it was Kester and Kettenbach, or Mr. Kettenbach, but he said they hadn't decided whether they would loan it or not; and a short time after that Mr. Kettenbach, I think it was, called me in and wanted to know what I thought about this timber, if I had located it and cruised it, and if I knew what there was on it. I told him I did, and he wanted to know if I thought a loan would be safe of \$400.00 on it. I told him I thought it would be perfectly safe; while it wasn't first-class timber, it was second growth, and it would probably cut a couple of million feet to the quarter section, and I considered it safe to loan on it.

Q. Now, what next happened?

A. Well, it appears that he loaned the money on these claims; [2781—2451] and after these boys had proved up there was several of them came to me and wanted to know if I didn't think these parties would buy the claims.

Q. Now, did they all prove up at the same time?

A. No; I think there was four proved up that day.

Q. And it was these four that came to you?

A. Yes.

Q. All right. What did you tell them?

A. Well, I told them I didn't know. They said they would rather sell their claims if they could get

(Testimony of Fred W. Emory.)

something reasonable for them instead of giving a mortgage on them, because they were all homesteading in there, and they could use the money to good advantage to improve their homesteads with.

Q. And then what did you do?

A. Well, I spoke to Mr. Colby about it. I told him the boys would rather sell those claims out and out than to mortgage them, and to see what he could do about it, and I think he went and saw Messrs. Kester and Kettenbach, and they decided that they would buy the claims, providing they were all right.

Q. And when were they sold?

A. I think they were sold that day.

Q. And do you know anything about the sale of the other two claims?

A. No, I don't know about the arrangements for the sale of the other two claims.

Q. Now, was there any talk of the sale of these claims before they made their final proof? A. No.

Q. Was there any understanding or agreement between you that they were to take these claims up for you? A. None whatever.

Q. What location fee did they pay you?

A. They paid me \$100.00. [2782—2452]

Q. \$100.00 for each claim?

A. Each claim.

Q. Are you acquainted with Clarence W. Robnett?

A. I am, yes, sir.

Q. How long have you known him?

A. Why, I think about fifteen years.

Q. I will ask you, Mr. Emory, if, the morning

(Testimony of Fred W. Emory.)

after the first conversation with Mr. Colby, between Mr. Colby and Mr. Kettenbach, relative to loaning the money on the claims, that you and Mr. Colby came into the office—William F. Kettenbach's private office—and talked the matter over, and you told Mr. Kester, or Mr. Kettenbach, or either of them, that you had checked these claims over, and you knew they were the best claims in that whole township that was subject to filing, and that Mr. Kester told Mr. Colby that they would go and furnish the money for the proof, and take the claims under the same conditions that you had with the entrymen, to pay them \$200.00 for their right?

Mr. GORDON.—Objected to as leading and suggestive.

WITNESS.—No; I never had any such conversation.

Mr. TANNAHILL.—Just answer the question.

A. Well, the way I understand the question—the way, I mean, that I never had any such conversation, between Colby and I and Kettenbach, or Colby and I and Kester, because we never met there to talk that over—any matter of that kind.

Q. Did you ever have any conversation wherein you said you were to pay the entrymen \$200.00 for their rights? A. No, sir.

Q. With anyone? A. No, sir.

Q. Now, did you give the names of the entrymen at any conversation between Mr. Kettenbach and Mr. Kester, or Mr. Colby and yourself? A. No, sir.

Q. I will ask you if in any conversation between

(Testimony of Fred W. Emory.)

yourself, Mr. [2783—2453] Colby, Mr. Kester and Mr. Kettenbach, or either of them, that Mr. Kester told Mr. Colby in your presence to come in when the time came for the proof, and he would give you the money? A. No, sir.

Q. Did you ever at any time tell Mr. Kester or Mr. Kettenbach, or anyone else, that you had an arrangement with these entrymen to pay them \$200.00 for their right, and they were to deed the claims to you?

Mr. GORDON.—Objected to as leading and suggestive.

WITNESS.—No, sir.

Mr. TANNAHILL.—Q. State whether or not you ever at any time had a conversation with Mr. Kester or Mr. Kettenbach, or either of them, wherein you stated to them that if they would take the claims off of your hands and furnish the money for final proof, the entrymen could deed the claims direct to Kester and Kettenbach. A. No, sir.

Q. Mr. Emory, since these claims were sold did you have a conversation with Robnett concerning your testifying for the Government—Clarence W. Robnett?

A. Why, I was approached by Robnett here once some time—I think it was something over a year ago. It was about the time the bank—the National Bank trouble came up, the Lewiston National Bank trouble here.

Q. About the time Robnett was charged with embezzling money from the Lewiston National Bank?

(Testimony of Fred W. Emory.)

A. About that time. It was soon after he was charged.

Q. Now, what did he say to you?

A. Why, the first inkling I had of it, he sent Mr. Wagner to me first.

Q. What did Wagner tell you?

Mr. GORDON.—Objected to as hearsay, and objected to also as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Just go ahead and answer the question. [2784—2454]

A. He told me, the way I understood him, that Johnson and Robnett had requested him to come to me.

Q. Miles S. Johnson?

A. Miles S. Johnson—that is the way I understood him—had requested him to come to me and ask me if I couldn't come out and testify for the Government in the land cases; that I could have assurance that the indictment which was against me at that time would be dismissed if I would do this, and he wanted to know what he should tell them, and I told him to go to hell—that is, to tell them to. That is the way I felt about it. That is the facts in the case. Well, the next day Mr. Robnett called me out of the barber shop up here on the corner of Lincoln Street and Main here, and asked me if I didn't want to get that indictment dismissed, and I told him the indictment wasn't worrying me any, as far as that was concerned. "Well," he says, "now you don't care anything about the boys, Will and George—Kester and

(Testimony of Fred W. Emory.)

Kettenbach—or any of those.” He says, “They have never done anything for you.” And I told him no, nothing particular, only I had borrowed some money at the bank, etc., and I had always had to pay my interest, and he says, “You don’t care anything about them. Now,” he says. “you can get in and help me out a whole lot here, and help to convict them, and help the Government out, and get the indictment dismissed at the same time.” I told him that I didn’t know anything that would help him in this matter in any way whatever.

Q. Now, did you have any talk with any other Government official about it?

A. Why, I had a talk with Mr. Watt and Mr. Smith one evening.

Q. A special agent of the Government?

A. A special agent, I think; that is, Mr. Smith; I have seen him in the courtroom, and he represented the Department of Justice here, he told me.

Q. Now, where did that conversation take place?

A. In the office in the Weisgerber building, one evening. [2785—2455]

Q. What was said there?

A. Well, they called me up over the phone first, and wanted to know if they could have a talk with me, and I told them they could, and they wanted me to say some time when I could see them when I wasn’t busy, or they would come to my office, or meet me any place, and I told them I would be down town that evening about 7 or half-past 7, and if they would

(Testimony of Fred W. Emory.)

be in their office I would call. I did call that evening.

Q. What conversation did you have?

A. They told me that they had lots of cards on the table, and that they wanted to get them cleaned up, a lot of them, and they told me that they wasn't after me or Colby—or, they told me that while they had plenty of evidence to convict Mr. Colby and myself, that we wasn't the kind of men they were after; that they were after Kester and Kettenbach; and that if I would get in and testify for the Government as to what I knew in the Kettenbach and Kester case, why they could get that card off of the table. That is the way they put it.

Q. You understood that they were referring to that indictment against you?

A. Yes, that is the way I understood it. I told them that I didn't know anything that would do the Government any good in their case, and as far as my indictment was concerned, why that wasn't bothering me; if they thought they had evidence, why to go ahead and try it.

Q. Are you acquainted with anything further that was said?

A. I don't know as I think of anything further, only some little items, maybe. They told me as I left—I think Mr. Watt told me when I left that they didn't expect I would tell them anything, anyway.

Cross-examination.

(By Mr. GORDON.)

Q. I understood you to say that all they asked

(Testimony of Fred W. Emory.)

you to testify to was to testify to what you knew about the transactions of Kester and Kettenbach?

A. Why, I think they put it up that way, and also for the Government. [2786—2456]

Q. And when was this conversation with Mr. Watt and Mr. Smith?

A. Well, I will have to think awhile. I think it was—it was some time before the Boise trial last winter.

Q. Some time before the Boise trial in February last?

A. I think it was January or February, some time along there.

Q. I mean it was prior to that trial?

A. It was prior to that trial.

Q. Now, when did you first tell any of the defendants or any of their counsel about these conversations? A. Tell who?

Q. Either or any of the defendants or their attorneys about these conversations which you have related?

A. Why, I think I first spoke of having a conversation with Mr. Smith and Mr. Watt a few days ago. I don't know but what it was yesterday, first.

Q. You didn't tell them before you testified at Boise, at the trial you have just referred to?

A. I don't think I did, no, sir.

Q. You didn't tell about the conversation you have related as having had with Robnett until when?

A. Why, I am under the impression that I spoke about that shortly after we had that conversation.

(Testimony of Fred W. Emory.)

Q. Who did you speak to about that?

A. Why, I ain't sure whether it was Mr. Tannahill or Mr. Kettenbach.

Q. And that has been a year ago, or more than a year ago?

A. Why, I couldn't tell you the date on it any more than it was right after these bank cases came up.

Q. Well, it was six months before the trial that you testified at in Boise, was it not?

A. Why, I don't think it was, although it might have been. [2787—2457]

Q. Well, I mean if it was some time near a year ago, it must have been somewhere near six months before the trial at Boise, wasn't it?

A. Well, I won't undertake to tell just how long it was without looking at the record.

Q. Well, this matter with reference to the charge in the bank cases came out in July or August a year ago, didn't it?

A. I think it did, somewheres along there, and it was after the trouble had been going for some little time that he had a conversation with me.

Q. You were not asked at the trial at Boise anything about these conversations, were you?

A. I think not.

Q. Now, you say that you had a talk with either Mr. Kester or Mr. Kettenbach at the bank, relative to getting money for final proof for some entrymen whose names you mentioned?

A. No, I didn't say that.

(Testimony of Fred W. Emory.)

Q. Well, what did you say?

A. Well, I spoke about asking Mr. Colby to look out for somebody who would be liable to loan some money on the claims for these boys. I was busy back and forth on the river in the woods at that time, and I asked Mr. Colby to kind of keep an eye out for somebody who would be liable to loan money on them to prove up *up*, that they were short.

Q. And didn't you talk with anybody at the bank about that? A. No.

Q. Didn't you go down to the bank to see them about getting money for these claims?

A. No, I didn't talk with them about getting the money.

Q. What did you go to the bank for?

A. Mr. Kettenbach called me into the bank and asked me about these claims, and if I thought a loan was safe on them.

Q. And what was said then? [2788—2458]

A. He told me he understood I had cruised these claims and located them, and wanted to know about what they were, and I described the claims to him.

Q. And told him they were worth a loan for how much?

A. He asked me, if I remember right, if I considered a \$400.00 or \$500.00 loan safe on them, and I told him I did; I thought they were good security for the money.

Q. Now, you say there were four of them came down to make proof at one time; is that correct?

A. There was four at one time, I am satisfied.

(Testimony of Fred W. Emory.)

Q. Now, do you remember which four they were?

A. Well, I think Mr. Clute, Mr. Evans, and Mr. Newman I think. I am not sure. I won't be sure about this, now.

Q. Wasn't Bishop with them—

A. And Mr. Bishop, I think; yes.

Q. Newman, Dent—no—Newman—cut that Dent out—Newman—

A. —and Clute.

Q. —Clute, Bishop, and Evans?

A. I think that was the four that proved up. I wouldn't be positive about it. It is a long time ago and I kept no record of it whatever.

Q. Now, was that the day that they got the money and made proof that you had this talk with Mr. Kettenbach?

A. I think it was, in the afternoon of that day.

Q. Of that day? A. Yes.

Q. And Mr.—

A. Or in the forenoon; I wouldn't be positive which it was.

Q. Well, I am not caring especially whether it was the afternoon or the morning. And Mr. Colby was down at the bank at the same time, was he not?

A. No, he wasn't there, to my knowledge, at that time. [2789—2459]

Q. Now, where were the entrymen at the time you were in the bank? A. They were about town.

Q. Well, I mean did they come down to the bank with you. A. No, sir.

Q. Well, after you saw Mr. Kettenbach, where did you go? Did you remain around down town?

(Testimony of Fred W. Emory.)

A. Why, I came out of the bank. I couldn't tell exactly where I went. I was in business here in town, and dodging around all over the town.

Q. Well, did you go over to Mr. Barnett's office with these entrymen?

A. I think when they made out the papers that I went over with some of them—not all of them.

Q. Were you over there at Mr. Barnett's office in front of the Beehive with Mr. Colby and the entrymen, when they were there awaiting for Mr. Barnett to make out their mortgages?

A. I think I met Mr. Colby there by the Adams Block, in front of Barnett's. You see he was in the adjoining block at that time, his office. I remember seeing Mr. Colby there on the sidewalk, talking with him.

Q. Were you in Mr. Barnett's office when the entrymen were waiting for him to prepare mortgages for them?

A. Well, I was there at the office that afternoon, and I think he was to prepare mortgages for these boys; but whether he did or did not I couldn't swear to that.

Q. And was it you that told Mr. Colby that the boys had determined that they would rather sell than to give a mortgage? A. I told him that, yes.

Q. And did you tell these entrymen that they would have to give a mortgage to secure the money if you got it for them? A. I didn't tell them so, no.

Q. Well, were you intending that they should give a mortgage, [2790—2460] or were you to stand

(Testimony of Fred W. Emory.)

good for that?

A. I didn't have anything to do with that at all.

Q. Well, you had promised them that you would get them the money, hadn't you?

A. I told them that I would try and look out for somebody that would loan them the money, and I turned it over to Mr. Colby to look out, because I was away so much that I couldn't attend to it.

Q. And you didn't intend to endorse their notes, did you? You intended that they would secure it by their property, didn't you?

A. I didn't intend to endorse the notes, no, sir.

Q. And what was it that Mr. Kettenbach asked you—whether these claims would stand a loan of between \$400.00 and \$500.00?

A. "Why," he said to me, he says, "I understand you cruised these claims and know what they are," and wanted to know what they was, and if I thought they were safe to loan \$400.00 or \$500.00 on them, and I told him what the character of the timber was, and about what I thought was on it, the location of it, etc., and told him that I thought the loan was perfectly safe for that amount.

Q. And do you remember what time of day it was that they went to Barnett's office and made the deeds?

A. Why, I think it was about dark; I know it was quite late.

Q. Now, you had had that talk with Mr. Kettenbach before he had loaned the money; is that correct?

A. I think I did. I think that was his object in calling me in there, to find out what the land was.

(Testimony of Fred W. Emory.)

Q. Mr. Emory, you were one of the final proof witnesses for Frederick W. Newman, were you not?

A. Why, I think so; I couldn't say positively.

Q. I show you the testimony of Fred Emory, given on final proof in the entry of Frederick W. Newman, the testimony of Fred Emory being dated June 17th, 1903, and ask you if that is your signature to that paper? [2791—2461]

A. Yes, sir, that is my signature.

Q. I show you the cross-examination taken at the same time, on the same date, and ask you if that is your signature to that paper?

A. Yes, I am satisfied that is my signature.

Q. And you swore to it before J. B. West, the Register? A. I think so.

Q. Mr. Emory, do you remember this question being asked you, Question 8, on cross-examination: "Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land, and to hold it for six months without mortgaging it?" Do you remember that question being asked you?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. GORDON.—Q. Do you remember that question being asked?

A. Why, I don't remember now. I have been a witness a great many times in the land office for different parties, being acquainted with the timber country up there as I was. I don't remember being

(Testimony of Fred W. Emory.)

asked in that particular case. My usual answer was, though, to that, that I didn't know.

Q. Well, you answered "Yes" in this regard.

A. Well, in that case I knew Mr. Newman to be worth enough to do that, and more, too, at that time.

Q. But you knew at that time that Mr. Newman had borrowed that money that day; and you had been instrumental in getting it, hadn't you?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

WITNESS.—No; I don't know whether he got his money.

Mr. GORDON.—Q. You say you didn't know where he got his money?

A. I did not, no, sir.

Q. Isn't that one of the claims that Mr. Kettenbach asked you [2792—2462] about?

A. Why, it is one of the claims, but I didn't know where he got his money. I knew he was good for that amount of money.

Q. And do you remember Question No. 7 being asked you at the same time, on cross-examination, in the Frederick W. Newman entry, and you were asked "What is his financial condition, as far as you know?" and you said "Good."

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Do you remember that question being asked, and that answer being made by you?

A. Why, I don't remember that particular question; but if a man had asked me the question I should

(Testimony of Fred W. Emory.)

say that it was good; that is, in an average way; he was worth a little property, able to take care of himself and family.

Mr. GORDON.—Q. Do you consider a man's financial condition good that hasn't got \$400.00?

A. Well, I have seen lots of men that was worth half a million that didn't have \$400.00 about them.

Q. And would their financial condition be good?

A. I would consider it good, yes, if they were worth that much money.

Q. But you had at that time, though, sent Mr. Colby to see if he couldn't borrow \$400.00 apiece for these men, hadn't you?

A. No, sir, I didn't state that at all. I told him to look out for the money what they would have to have; that they would have to borrow the most of the money to prove up with—they had told me they would.

Q. I show you the testimony of Fred Emory, given at the final proof on the entry of Charles Dent, dated June 23, 1903, and ask you if that is your signature to that paper? [2793—2463]

A. Yes.

Q. I show you the cross-examination of Fred Emory, given at the same time, and ask you if that is your signature to that paper? A. Yes.

Q. Do you remember this question being asked you at that time, Mr. Emory, Question 7 on cross-examination, referring to the financial condition of Mr. Dent: "What is his financial condition, so far as you know?" and that you answered "Good."

(Testimony of Fred W. Emory.)

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And the next, Question 8: “Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land, and hold it for six months without mortgaging it?” and that you answered “Yes,” “Yes.” Do you remember that?

Mr. TANNAHILL.—The same objection.

WITNESS.—I don't remember that, but I probably would have said “Yes.”

Mr. GORDON.—I offer in evidence the testimony of Fred Emory as a witness on the final proof of Charles Dent, and the cross-examination of Fred Emory taken at the same time; and the testimony of Fred Emory given at the final proof on the entry of Frederick W. Newman, and the cross-examination of Fred Emory, given at the same time, all of which papers have been identified by Fred Emory.

Mr. TANNAHILL.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—I think they were already in, but I will offer them again, to be sure.

Q. Mr. Emory, I show you the testimony of Fred Emory given at the final proof on the entry under the timber and stone act of Charles Smith, the testimony of Fred Emory being dated June 23d, 1903, and [2794—2464] ask you if you signed that paper? A. Yes.

(Testimony of Fred W. Emory.)

Q. I show you the cross-examination of Fred Emory, taken at the same time, and ask you if you signed that paper also? A. Yes.

Q. I will ask you if you remember this question being asked you on cross-examination at the land office, Question 7: "What is his financial condition, so far as you know?" and the context that goes before it shows that it refers to the financial condition of Charles Smith, and that you answered "Good."

Mr. TANNAHILL.—Objected to as incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. You remember that, do you?
A. I don't remember it; no.

Q. Do you remember this question being asked you: "Question 8. Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land, and hold it for six months without mortgaging it?" and that you answered that "Yes."

Mr. TANNAHILL.—The same objection.

WITNESS.—I don't remember.

Q. Well, from what you remember about his financial condition and about the mortgage, you would answer now the same as it is purported to have been answered then, would you?

A. Well, from his financial condition I would consider it good. He was a fellow that generally had a little money around him and something coming to him, and nobody to keep but himself.

Q. Now, do you remember when Charles Smith

(Testimony of Fred W. Emory.)

and Charles Dent made their proof?

A. I don't remember when it was, no, sir.

Q. Do you know when they sold their property?

A. No, I don't know just when they sold it.

[2795—2465]

Q. Did they talk with you about selling it, prior to selling it?

A. They did talk with me about selling it, and wanted to know if I knew of anybody that would buy it.

Q. When was that?

A. Oh, I think it was soon after they proved up, probably; I couldn't tell just when.

Q. And did you tell them to whom they could sell it?

A. I think I told them that Kester and Kettenbach bought the other boys' claims that was up there in the woods with them—their neighbors.

Q. Sir. I didn't hear that.

A. I think I told them that Mr. Kester and Mr. Kettenbach bought the adjoining claims there of their neighbors. These parties practically all lived up in the woods there—homesteaders there—and that possibly they would buy theirs, I didn't know; I had no knowledge whether they would or not.

Q. And you say that was several days or some time after they made their proof?

A. It was after they made their proof, but how long I couldn't say.

Q. Well, now, did you just meet them casually, or did they come to the office, or did you meet them

(Testimony of Fred W. Emory.)

on the street and have that conversation?

A. Well, I think that conversation took place on the streets. They usually came to the office here whenever they came to town. They were working for our firm the biggest part of the time.

Q. Did Mr. Colby tell you who he had been to see to try to get the money to loan to these boys to make their final proof?

A. I didn't understand the first of that question, Mr. Gordon.

The last question was repeated by the Reporter.

A. Why, he told me that he had approached several parties, and at that time the most of the hope of the parties was with Mr. Skinner, [2796—2466] providing his money got here.

Q. Did he tell you he had been to Mr. Guernsey?

A. Yes.

Q. And Mr. Beach? A. Yes.

Q. Which Mr. Beach? Did he mention his name? A. The old gentleman.

Mr. GORDON.—Well, that's all.

Mr. TANNAHILL.—That's all.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [2797—2467]

At 10 o'clock, A. M., Saturday, October 15, 1910, the hearing was resumed.

[**Testimony of George H. Kester, for Defendants.**]

GEORGE H. KESTER, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. George H. Kester.

Q. What is your age? A. Thirty-nine years.

Q. Where do you reside? A. On Spirit Lake.

Q. In what county and state?

A. Kootenai County, Idaho.

Q. How long have you resided there?

A. About three years.

Q. You are one of the defendants, are you?

A. I am.

Q. And you are the same George H. Kester who is named in the records and indictments that was tried at Boise in the month of February and March, 1910, upon a charge of conspiracy to defraud the United States? A. I am.

Q. And you are one of the defendants who was acquitted at that time, are you, of the charge?

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

A. I am.

Mr. TANNAHILL.— [2798—2468] Q. And you are one of the defendants who is mentioned in the cases 1605, appealed to the Circuit Court of Appeals from the Northern Division, District of Idaho, from a verdict and judgment of guilty, upon the same charge that you was acquitted on at Boise, are you?

(Testimony of George H. Kester.)

A. I am.

Q. And one of the same defendants who were named in the indictment and proceedings before the Circuit Court of Appeals wherein the Circuit Court of Appeals reversed the judgment and verdict of the jury in the lower court, are you? A. I am.

Q. And that was the same case or proceedings, with the exception that additional indictments were consolidated with it, that was afterwards tried at Boise, was it not? A. Yes, sir.

Mr. GORDON.—I wish my objection to run to all of this line of testimony.

The SPECIAL EXAMINER.—Yes, just let the objection run to all of that line of testimony.

Mr. TANNAHILL.—Q. I will ask you, Mr. Kester, if those proceedings at Boise, involved the same lands as are involved in bill No. 406, referred to as the William B. Benton, Joel H. Benton, George W. Harrington, James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Guy L. Wilson, Frances A. Justice, David S. Bingham, William E. Helkenberg, Rowland A. Lambdin, Ivan R. Cornell and Fred W. Shaeffer claims?

Mr. GORDON.—Objected to as not the best evidence, and upon the further ground that it is incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Just answer the question.

A. It is, in part. [2799—2469]

Q. Are you acquainted with the defendant William F. Kettenbach? A. I am.

(Testimony of George H. Kester.)

Q. And William Dwyer? A. I am.

Q. How long have you known each of those gentlemen?

A. I have known Mr. Kettenbach for about thirty years, and Mr. Dwyer for about fifteen years, or such a matter.

Q. How long have you lived in Idaho?

A. Practically all my life.

Q. How old was you when you come to Idaho?

A. Oh, just a mere boy; I think about six years old.

Q. Where was you born? A. California.

Q. Was you ever connected with the Lewiston National Bank? A. I was.

Q. During what periods of time?

A. From 1890 to 1907, to the middle of 1907.

Q. What positions did you hold in the Lewiston National Bank during that time?

A. I began in the bank as messenger, and was advanced to bookkeeper, and then assistant cashier, and then cashier; I was cashier of the bank from about 1895, I think, until I resigned in 1907, in July.

Q. Do you remember what date it was in July that you resigned? A. About the 1st of July.

Q. Who was president of the bank during that time, during the time you was connected with it?

A. Mr. Frank W. Kettenbach, Mr. D. M. White, and Mr. W. F. Kettenbach, Jr. Mr. W. F. Kettenbach, Sr., was president of the bank [2800—2470] when I was first employed.

Q. Then F. W. Kettenbach was president, was he?

(Testimony of George H. Kester.)

A. Yes.

Q. And then D. M. White?

A. Yes, sir. And C. C. Bunnell was president before Mr. Kettenbach, before F. W. Kettenbach.

Q. And then D. M. White was president after F. W. Kettenbach was president? A. Yes, sir.

Q. And then William F. Kettenbach succeeded F. W. Kettenbach?

A. No, W. F. Kettenbach succeeded Mr. White.

Q. That was the defendant William F. Kettenbach? A. Yes.

Mr. GORDON.—And the one you referred to as junior? A. Yes.

Mr. TANNAHILL.—Q. Mr. Kester, you have heard the evidence of the various witnesses relative to your acquiring timber lands, have you not?

A. I have.

Q. How did you come to become interested in the timber business?

A. Well, Mr. Kettenbach and I had some funds that we wanted to invest, and we thought we would buy some timber land. We begun in a very small way, and after we had made some purchases it seemed to be a pretty safe investment and we kept on buying.

Q. In what section of the country did you first invest?

A. We first bought some lands up in the Potlatch country and on the St. Maries, and we bought some lands on Pack River.

Mr. GORDON.—What river?

A. Pack River, in Kootenai County, at that time.

(Testimony of George H. Kester.)

Mr. TANNAHILL.—Q. Then where did you next purchase lands? [2801—2471]

A. The next purchase of lands was in the Clear-water country.

Q. Now, in what district—or what did you do with your lands that you purchased over on Pack River and in the Potlatch country? A. We sold those.

Q. Mr. Kester, you have read over the bills in this action, have you not,—No. 388, 406 and 407?

A. Yes, sir.

Q. In the bill it is charged that you, with others, fraudulently and unlawfully conspired to defraud the Government of the United States out of valuable tracts of timber land, and it is mentioned and charged in the bill that you, William F. Kettenbach and William Dwyer, and others, fraudulently and unlawfully induced William B. Benton and Joel H. Benton to file on a timber claim for your use and benefit, and for the benefit of the defendants. I will ask you if you had anything whatever to do with William B. Benton acquiring the tract of land involved in bill No. 406? A. Nothing whatever.

Q. Did you ever have any conversation with him about it, or communication with him, in any way or manner? A. No, sir.

Q. Did you have anything whatever to do with Joel H. Benton acquiring title to any timber lands?

A. No, sir.

Q. Did you ever own the lands of William B. Benton or Joel H. Benton?

A. No, sir, never had any interest in them.

(Testimony of George H. Kester.)

Q. You never had any interest in them at all? Did you have anything to do with George W. Harrington acquiring title to a tract of timber land?

A. No, sir. [2802—2472]

Q. Did you ever own any interest in that?

A. I never did.

Q. What do you know about Van V. Robertson acquiring title to his tract of timber land? Did you have anything to do with that?

A. No, sir, except that I think the bank owned the note of Robertson, and it became due and he was notified and didn't pay much attention to the first notice, and notified him again, and he replied that he was endeavoring to sell the land and as soon as he could sell it he would take up this note. It went on for some little time again, as I remember it, and we sent him a stronger notice, that the matter would have to be taken care of very soon, and he replied that he had been unable to sell the land, and that if I would cancel his note he would sign a deed for the land. And I made some little inquiry about it then, as to what the land was worth, and concluded that that was the best way to clean it up, and I sent him a deed and he signed it and returned it, and I sent him his note. And that was a transaction for the bank entirely; the bank owned the claim, or did own the claim.

Q. Did you have any knowledge or understanding or information concerning any arrangements existing between Van V. Robertson and Clarence W. Robnett? A. None whatever.

(Testimony of George H. Kester.)

Q. Did you have any knowledge of any understanding, transactions or agreement between William B. Benton, Joel H. Benton and George W. Harrington and Clarence W. Robnett, or anyone else, for the sale or purchase of their lands?

A. No, sir.

Q. Do you know anything about John W. Killinger acquiring title to the tract of land involved in bill No. 406? A. I do not. [2803—2473]

Q. Have you ever had any interest in that tract of land? A. None whatever.

Q. Did you have any notice or knowledge of any understanding or agreement existing between Clarence W. Robnett and John W. Killinger?

A. No, sir.

Q. Has either William F. Kettenbach or William Dwyer had any interest in that tract of land, to your knowledge? A. Not that I know of.

Q. Do you know anything about John E. Nelson acquiring title to the tract of timber land mentioned in the bill? A. No, sir.

Q. Have you ever had any interest in his tract of land, involved in bill No. 406? A. No, sir.

Q. Did you ever have any notice or knowledge of any understanding or agreement between John E. Nelson and Clarence W. Robnett? A. No, sir.

Q. Do you know anything about Soren Hansen acquiring title to a tract of timber land?

A. No, sir.

Q. Have you ever had any interest in that tract of land? A. No, sir.

(Testimony of George H. Kester.)

Q. Did you ever have any notice or knowledge or information concerning any understanding or agreement between Soren Hansen and Clarence W. Robnett relative to a sale of his land? A. No, sir.

Q. State all you know about the acquiring of title to a tract of land by James C. Evans, Lon E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, and others, known as the Emory and Colby entrymen. [2804—2474] Just explain what relation you sustained to it, what you know about your acquiring title to the land, and everything you know in connection with it.

A. The first that I knew about acquiring title to that land was when Mr. Kettenbach came in one morning, as I remember it, it was in the morning, and said that there were some claims up on the Clearwater that the parties had proved up on and wanted to sell, and that he had a favorable report on them from Mr. Emory and that he thought they were a reasonably good purchase, and I told him if he was satisfied with Mr. Emory's report on them I would be willing to go ahead with the purchase.

Q. Did you have any understanding or agreement for the purchase of these lands, or any part of them, before the entrymen made final proof?

A. No, sir, that was the only—

Q. Did you have any talk with Colby and Emory, or either of them, with Mr. Kettenbach, or in the presence of Mr. Kettenbach or otherwise, that you would take these lands off of their hands and pay the entrymen \$100.00 or \$200.00 for their rights, and you

(Testimony of George H. Kester.)

pay all expenses in connection with the proving up and purchase of the lands? A. No, sir.

Q. Was there ever any such conversation between you? A. No, sir.

Q. You heard the evidence of Clarence W. Robnett at Spokane, did you, to that effect? A. I did.

Q. Did you have any of those conversations that he testified to concerning Emory and Colby and yourself and William F. Kettenbach? A. No, sir.

Q. State whether or not Mr. Colby came into the interior of the bank and brought his chair up close to your desk and had a talk with you there concerning these entrymen and the fact that they had an [2805—2475] agreement with them to give them \$200.00 apiece for their land, and had fallen down and couldn't get the money, and if you would furnish the money to take them off of their hands under the same conditions that they had with them the entrymen would deed them to you.

Mr. GORDON.—Objected to as leading and suggestive.

A. No, sir.

Mr. TANNAHILL.—Q. I will ask you to state whether or not you paid the purchase price for these tracts of land—these entrymen known as the Colby and Emory entrymen. A. Yes, sir.

Q. State whether or not you had any notice or knowledge of any agreement existing between Mr. Colby and Mr. Emory and these entrymen relative to the purchase or sale of their land or the locating of them upon the land. A. No, sir.

(Testimony of George H. Kester.)

Q. Do you know anything about Pearl Washburn filing upon a tract of land and acquiring title to it under the timber and stone laws of the United States, involved in bill No. 406? A. Pearl Washburn?

Q. Yes.

A. I don't remember the party at all. Was that the wife of—

Q. The wife of Charlie Washburn.

A. She was a married woman?

Q. Yes. A. No, I know nothing about it.

Q. You had no interest in it at all?

A. No, sir, none whatever.

Q. Did you have any notice or knowledge of any arrangements between Clarence W. Robnett and Pearl Washburn concerning this claim? [2806—2476] A. No, sir.

Q. What do you know about George Morrison acquiring title to a tract of land under the timber and stone laws of the United States and your purchase of it from George Morrison, involved in bill No. 406?

A. Mr. Kettenbach and I purchased two claims, one from this man Morrison, and one from a man by the name of Hyde, and they were purchased together. I remember that Clarence Robnett brought these two men into the bank one evening, as I remember it, after we closed, brought them in the back way, and they came right up near my desk and Mr. Kettenbach came out from his office at that time—whether he was coming out to meet them or whether he incidentally came out—but I remember we all met right there, and Robnett says to Mr. Kettenbach, “These

(Testimony of George H. Kester.)

are the two gentlemen that own those claims I have talked to you about, about buying," and referring to a conversation that he had just had with him. Apparently Robnett had those men outside or in the directors' room at the time he had made this arrangement or tentative arrangement with Mr. Kettenbach; and the price of those claims was \$800.00 apiece, and, as I remember it, the checks were made out there and given to these men for those claims, and the deeds were delivered at that time.

Q. Did you have any talk with them, or understanding or agreement for the purchase of their land, prior to the time they made final proof?

A. None whatever; and the basis on which those claims were bought was on an estimate, as I remember it, of Al. Smith's that Clarence Robnett had.

Q. Did you hear the evidence of Clarence W. Robnett at Spokane wherein he stated that he told you about his having a prior agreement with these entrymen?

A. Yes, I heard such statement. [2807—2477]

Mr. GORDON.—Objected to as leading.

Mr. TANNAHILL.—Q. State whether or not he ever made any such statement as that to you.

A. Nothing of the kind at all.

Q. That statement is false, is it?

A. Absolutely false.

Q. And this man Hyde that you referred to is Edward M. Hyde, who is mentioned in bill No. 406, is he? A. Yes, sir.

Q. And as I understand you, you had no notice or

(Testimony of George H. Kester.)

knowledge of any arrangements existing between Mr. Hyde and Morrison or Robnett or anyone else for the purchase or sale of their land, prior to the time they made final proof? A. None whatever.

Q. And these men had made their final proof when Clarence Robnett brought them in to talk to you and William F. Kettenbach, the defendant, regarding the purchase of their lands, had they? A. Yes, sir.

Q. Are you acquainted with Drury M. Gammon?

A. I am.

Q. Do you know anything about his acquiring title to a tract of land under the timber and stone laws of the United States and the sale of it to the Lewiston National Bank?

A. That transaction came up in this way. The bank purchased this note, the note of Drury M. Gammon, and I think it was something over \$400.00, something about \$400.00, and when the note became due I notified Mr. Gammon, and, as I remember it, the first notice that I sent him he came in and paid the interest on the note, and stated that [2808—2478] he had a timber claim and that he was figuring on disposing of it, and to let the note run for a short time and he felt that he would be able to take it up. It ran on for some little time longer, and I sent him another notice, and he came in and said that he had failed entirely to sell the land, and that if I would take a deed for it that he would deed the land over for the note, and I looked the claim up a little, and it seemed like it would pay out, so I told him if he would bring in a deed for it that I would deliver him his note.

(Testimony of George H. Kester.)

Q. Do you remember whether he deeded the land direct to the bank or deeded it to Robnett, and Robnett deeded it to the bank?

A. Well, he came in in a day or so and he says, "I find out that Clarence W. Robnett has a deed to that claim," and he says, "I will get a deed from Clarence Robnett to the bank," and he says, "if you will deliver over the note." And either he did or Clarence delivered the deed, I don't remember now, to the bank, and his note was cancelled in consideration of the deed.

Q. Did you have any notice or knowledge of any prior agreement between Clarence W. Robnett and Max Gammon for the purchase of this land before he made final proof? A. No, sir.

Q. State whether or not Clarence Robnett ever told you anything about his arrangements with Gammon for the purchase of this land, before he made final proof? A. No, he did not.

Q. Do you know Guy L. Wilson? A. I do.

Q. Do you know anything about his acquiring title to a tract of land under the timber and stone laws of the United States, referred to in bill No. 406, or his sale of it to yourself and Mr. Kettenbach? [2809—2479]

A. I know that we bought a claim from—I think we bought a claim that was proved up on by Mr. Wilson. I think we bought it through Mr. Dwyer.

Q. Just state what you know about the purchase of it.

A. As I remember it, we bought it through Mr. Dwyer.

(Testimony of George H. Kester.)

Q. You paid the purchase price for it, did you?

A. Oh, yes.

Q. State whether or not you had any understanding or agreement with Mr. Dwyer or Guy L. Wilson, or anyone else, for the purchase of this claim, before he made final proof. A. No, sir.

Q. Do you know anything about the acquiring of title to a tract of land under the timber and stone laws of the United States by Mrs. Frances A. Justice, or the sale of her land to earn money to make her final proof?

A. As I remember it, that claim was sold to Mrs. Dwyer.

Q. Sold to Kittie E. Dwyer? Did Mrs. Justice see you about borrowing the money for it, have you any recollection of it?

A. I remember that she did apply, it seems to me, to borrow the money. My memory is not very clear on that.

Q. Did you have any understanding or agreement with Mrs. Justice for the purchase of this land by Kittie E. Dwyer or William Dwyer, or had you any notice or knowledge before she made final proof?

A. No, sir.

Q. Do you know Edna P. Kester? A. I do.

Q. What relation do you sustain to her?

A. She is my wife.

Q. Do you know anything about her acquiring title to a tract of land under the timber and stone laws of the United States? [2810—2480] A. I do.

Q. What do you know about that?

(Testimony of George H. Kester.)

A. I know that she has a timber and stone claim, in 38-5; that I made her a present of the money to acquire it from the Government.

Q. State whether or not she took that up for your benefit, or for the benefit of William Dwyer or William F. Kettenbach, or either or all of you.

A. She took it up for her own benefit entirely.

Q. Has she ever conveyed that land or agreed to convey it to anybody?

A. No, sir, not that I know of.

Q. Do you know Elizabeth Kettenbach?

A. I do.

Q. Do you know anything about her acquiring title to a tract of land under the timber and stone laws of the United States?

A. Simply that she did acquire it.

Q. Have you any interest in that tract of land?

A. No, sir.

Q. Have you ever claimed any interest in it?

A. No, sir.

Q. Has there ever been any understanding or agreement that you and William F. Kettenbach or William Dwyer, or any of the defendants, would purchase that tract of land from her? A. No, sir.

Q. Do you know William J. White and Mamie P. White? A. I do.

Q. Do you know anything about their acquiring title to a tract of land under the timber and stone laws of the United States?

A. Only that they did acquire it.

Q. Have you or William F. Kettenbach or Will-

(Testimony of George H. Kester.)

William Dwyer ever had or [2811—2481] claimed any interest in those two pieces of land?

A. No, sir.

Q. Have you any understanding or agreement that you will purchase those tracts of land, that you know of? A. No, sir.

Q. Do you know Elizabeth White? A. I do.

Q. Do you know anything about her acquiring title to a tract of land under the timber and stone laws of the United States?

A. Only that she did acquire it.

Q. Have you any understanding, contract or agreement to purchase that tract of land? A. No, sir.

Q. Have you any interest in it of any kind or nature? A. No, sir.

Q. Have you ever claimed any interest in it?

A. No, sir.

Q. Is there any understanding or agreement whereby she has taken this land up for yourself or William F. Kettenbach or William Dwyer, or either of you, or that you will eventually acquire any interest in it? A. No, sir.

Q. Do you know Martha E. Hallett? A. I do.

Q. Do you know anything about her acquiring title to a tract of land under the timber and stone laws of the United States? A. Yes, sir.

Q. Do you know anything about her getting the money to pay the purchase price? A. Yes, sir.

Q. What do you know about that? [2812—2482]

A. At that time I was making some collections for Mrs. Hallett, and when she proved up on this land I

(Testimony of George H. Kester.)

paid her over the money to acquire it.

Q. She didn't borrow the money from the Lewiston National Bank? A. No, sir.

Q. Can you mention any collections that you was making for Mrs. Hallett?

A. There was a note that Mrs. Hallett had assigned to me, that was against an estate in Oregon, and I was making some collections on it at that time.

Q. And about how frequently would those collections come in?

A. Well, whenever they would declare any dividends in the estate. They were selling the property as fast as they could, and whenever some property was sold they would send a check.

Q. Did you have any notes of Mrs. Hallett's outside of that?

A. Yes; yes, there were a great many notes; many of them were paid and some were not. She had notes from people all over the Potlatch country and up into the Clearwater country.

Q. Where did those notes come from? How did they originate?

A. They came from the estate of J. L. Hallett, and originated in a little bank up there, and the wheat business.

Q. J. L. Hallett in his lifetime did quite an extensive business, didn't he? A. Yes, sir.

Q. Now, is there any understanding or agreement, or has there ever been any understanding or agreement between yourself and Mrs. Hallett, or any of the defendants, that she should take that land up for

(Testimony of George H. Kester.)

you? A. No, sir. [2813—2483]

Q. Have you ever claimed any interest in it of any kind or nature? A. No, sir.

Q. Has Mrs. Hallett ever sold her land or offered it for sale that you know of? A. No, sir.

Q. Do you know Daniel W. Greenberg?

A. Yes, sir.

Q. Do you know anything about his acquiring title to a tract of land under the timber and stone laws of the United States? A. Yes, sir.

Q. Will you just state your connection, how you came to purchase it, and all you know about it?

A. Well, I know that we purchased that claim from Mr. Greenberg on the estimate and recommendation of Mr. Dwyer. I inquired of Mr. Dwyer about the claim and bought it on his estimate.

Q. When did you buy it, in relation to the time he made his final proof?

A. Well, it was after he made his final proof, I think, some little time; I don't just remember now. It may have been some considerable time.

Q. Had you any contract, understanding, or agreement with Mr. Greenberg that he should sell the land to you, before he filed upon it or made his final proof?

A. No, sir.

Q. The negotiations for the sale of it were instituted after he made his final proof, were they?

A. Yes, sir.

Q. I will ask you, Mr. Kester, if you know anything about the acquiring of title to land by David S. Bingham, William E. Helkenberg, the Taylor

(Testimony of George H. Kester.)

boys, Charles W. Taylor and Edgar J. Taylor, Edgar H. [2814—2484] Dammarell, Joseph H. Prentice, and the entrymen referred to in the bills as the O'Keefe entrymen? Just answer that yes or no.

A. Yes.

Q. Will you state your connection with those entries and all you know about it, and how you came to purchase the land?

A. We purchased the claims of Bingham, Prentice, and Dammarell, and Charles W. Taylor and Edgar J. Taylor, through Mr. O'Keefe.

Q. What conversation did you have with O'Keefe about it?

A. Well, after these men had proved up, O'Keefe came to me and wanted to know if I would buy those claims if the boys should conclude to sell them, and I told him that we would. But I remember another conversation with Mr. O'Keefe; I think it was before he went up into the timber. And he said that he had been talking with his nephews, I think, about going with him up into the timber, and that he had told them that he would like to take them in there and buy their claims. I told him that he couldn't make any such agreement with them, that that would be contrary to the law, and that he couldn't have any such agreement of that kind.

Q. Now, did you have any agreement or understanding with O'Keefe or with these various entrymen named as the O'Keefe entrymen of any kind or nature, that you would purchase their lands, before they made their final proof? A. No, sir.

(Testimony of George H. Kester.)

Q. Did you have any such agreement or understanding with Jack O'Keefe for the purchase of his claim, before he made final proof? A. No, sir.

Q. The negotiations for the purchase of these tracts of land was all begun after they made final proof, were they? A. Yes, sir.

Q. Do you know William McMillan?

A. I do. [2815—2485]

Q. Do you know anything about his acquiring title to a tract of land?

A. Only that he did acquire title to the land.

Q. I will ask you if you remember a conversation you had with Mr. McMillan at his place wherein you asked him if he had used his right, or anything of that kind?

A. Well, I was at Mr. McMillan's place as I came down from the upper country at one time, and I think he inquired about the timber lands up in there, but I am not very clear about the conversation. He was an old woodsman himself; he and my father were interested at one time on the Orofino Creek in some wood drives.

Q. Did you loan him, or did the bank loan him the money with which to make his final proof?

A. No, sir.

Q. What about the purchase of the land?

A. Well, I believe that that claim belongs to Mrs. Dwyer; I haven't any interest in it.

Q. Do you know anything about Hattie Rowland acquiring title to a tract of land under the timber and stone laws of the United States? A. No, sir.

(Testimony of George H. Kester.)

Q. Have you ever had any interest in that tract of land? A. No, sir.

Q. You never have claimed any interest in it?

A. No, sir.

Q. And William E. Helkenberg, have you testified to what you knew about his tract of land?

A. Well, we have a tract of land which is from William Helkenberg.

Q. What do you know about that?

A. Well, all that I know about it is that we bought it. [2816—2486]

Q. Did you have any understanding or agreement with him for the purchase of that tract of land, before he made his final proof? A. No, sir.

Q. Did you have any notice or knowledge of any agreement he had with anyone else for the sale of his land, before he made final proof? A. No, sir.

Q. Do you know anything about William Haevernick and Alma Haevernick acquiring title to a tract of land under the timber and stone laws of the United States? A. No, sir.

Q. Do you have any interest in those lands?

A. No, sir.

Q. Do you know Geary Van Artsdalen?

A. No, sir.

Q. Have you any interest in the tract of land he acquired under the timber and stone laws of the United States?

A. Well, I don't think so; just now I don't recall the land.

Q. You have no personal recollection of that?

(Testimony of George H. Kester.)

A. No, not right now.

Q. Do you know Robert O. Waldman? A. Yes.

Q. Do you know anything about the purchase of a tract of land from Robert O. Waldman or Clarence W. Robnett by the Lewiston National Bank?

A. No, sir.

Q. Has Clarence W. Robnett ever told you, or have you any notice or knowledge of any arrangements that he had with Robert O. Waldman for the acquiring of this land, or the sale of it? A. No, sir.

Q. Do you know Rowland A. Lambdin? [2817—2487] A. Yes, sir.

Q. Do you know anything about his acquiring title to a tract of land under the timber and stone laws of the United States and the purchase of it by yourself and William F. Kettenbach? A. Yes, sir.

Q. Just state briefly what you know about that, Mr. Kester.

A. I know that I purchased a timber claim from Mr. Lambdin after he had made final proof, and paid him for it.

Q. Had you any understanding or agreement with Mr. Lambdin that you would purchase this land from him, before he made final proof? A. No, sir.

Q. Do you know the witness Ivan R. Cornell?

A. I do.

Q. And you have read his evidence and you heard him testify at one time concerning his acquiring a tract of land, and also heard him testify that he had an agreement with you to sell it to you before he made his final proof, did you? A. Yes, sir.

(Testimony of George H. Kester.)

Q. Will you state fully, Mr. Kester, when you first met Mr. Cornell and your first conversation with him regarding his filing on a timber claim, or acquiring title to a tract of timber land?

A. I first met Mr. Cornell at the Bishop Scott Academy at Portland, in the school year of 1888 and 89. He was attending the school as a day scholar, and I was there as a boarder. The next time I met him was on the street one evening in Lewiston. As I passed by him I looked at him and thought that I recognized him, and either that evening or the next morning I saw him again, and I went up to him and asked him if he was the Cornell that I knew at the Bishop Scott Academy, and he said that he was, and wanted to know if I was the Kester that he knew there; and we had quite a talk about school days, and quite a little visit. I [2818—2488] saw him now and again after that, and one day he asked me if I could get him some employment, that he had been in rather hard circumstances, that he had come down from Kendrick with the expectation of getting some work on some railroad construction that he understood was about to begin, but that he had found out that it had been delayed; and he seemed very anxious that I get him some employment. I told him I would be very glad to give him any assistance that I could, and that I would look about and see if I could find something for him to do. I made several inquiries, but was unable to find any employment that I felt would be very satisfactory to him; and the next time I saw him I so reported to him, and he said that he

(Testimony of George H. Kester.)

was getting a little short of funds and that he would probably need some assistance, and in a few days I made him some little advance, and I think on two or three occasions. One day he came into the bank and wanted to know if I would let him have \$10.00, which I very gladly did, and he seemed to be very anxious to do something to better his condition; and I asked him if he had taken up a timber claim and he said that he hadn't, and wanted to know if there was any opportunity to do so, and inquired considerable about the requirements and all, and finally asked me if there was any way that he could get a timber claim. I told him that I didn't know of any at that time, but that I knew Mr. Dwyer, who knew considerable about the timber country, and I would have a little talk with him about it and see him again. And I then went to Mr. Dwyer and asked him if he knew of anything that he could locate Cornell on, and he said the only thing that he knew of at that time was a piece of land up there that he had filed on as a homestead, that on account of Mrs. Dwyer's health he wouldn't be able to live on the land, and that if he could get \$200.00 for his improvements he would relinquish the land, and I asked him when he would be able to take Mr. Cornell onto the claim, if he wanted it, and he said that he could go any time. And right soon [2819—2489] after that I saw Mr. Cornell again and told him that Mr. Dwyer could locate him on this claim of Mrs. Dwyer's for \$200.00 for his improvements, and he said, of course, that he didn't have any money to pay for it, and I then

(Testimony of George H. Kester.)

stated to him that I supposed that for something of that kind he could get money from his folks. I knew that his folks were quite responsible at the time I went to school, from the fact that he was attending school there as a day scholar, from all appearances, that he could get it from his folks. But he said that he probably would be able to get the money from his folks if it hadn't been that his father had met with some reverses, I think in some mining transactions, and that he couldn't get the money. And I then told him that if he wanted to take up the land that I would assist him, and he said very well, if I was good enough to help him by loaning him the money to go ahead with it he would do so, and wanted to know when he would be able to go up. I told him that Mr. Dwyer had said that he could go any time. "Well," he says "I wonder if he could go in the morning," and I told him I was satisfied he could, and if he would be at the station, go down and see Mr. Dwyer and he would meet him there. And the next that I remember about the transaction was that he came in one morning and stated that he had been up to the land office and they had informed him that they were ready to take his proof, and asked me if I would let him have the amount to make his proof. I let him have it, and in a few days—it may have been within a few days—I saw him on the street and asked him to come in and secure the loan. He stated that he had sent the final receipt up to Moscow, and as soon as that returned he would come in and secure the loan. And then again in a few days he

(Testimony of George H. Kester.)

came in one day with Mr. Dwyer, I believe, and said that he had been talking with Mr. Dwyer about that land and that he would like to sell it, and Mr. Dwyer had given him an estimate on it of its approximate value, and we agreed on [2820—2490] the price there and I paid him the money for it and cancelled his indebtedness.

Q. Was there anything else that you can remember now? A. Not that I remember, no.

Q. You heard the evidence, did you, that you had followed him up to his room and offered him \$100 for his right and you would pay all expenses?

A. Oh, yes.

Q. State whether or not anything of that kind occurred.

A. Well, I believe that I did find him at his lodgings perhaps when I told him that Mr. Dwyer would be ready to go with him in the morning; I am not so clear about that. But I never made him any offer for his right.

Q. Had you any understanding or agreement with him that you were to pay the expenses of his acquiring this land and him deed it to you and you give him \$100.00? A. No, sir.

Q. State whether or not the negotiations for the sale of the land all begun after he had made final proof. A. They did.

Q. What disposition have you made of this tract of land? A. Sold it.

Q. You received the money for it, did you?

A. Yes, sir.

(Testimony of George H. Kester.)

Q. State whether or not you made any statement to the purchaser relative to how you acquired the land.

A. None whatever; furnished them an abstract of the title of the land.

Q. What disposition, if any, have you made of the Rowland A. [2821—2491] Lambdin claim?

A. Disposed of that.

Q. You received your money for it, did you?

A. Yes, sir.

Q. State whether or not you made any statement to the purchaser of that land as to how you acquired it. A. No, sir.

Q. You heard the evidence of Clarence Robnett, did you, wherein he stated that he overheard a conversation in which you offered Lambdin \$100.00 for his right, you to pay all expenses of his proving up on the land, and him to deed to you? A. Yes, sir.

Q. State whether or not such conversation as that occurred. A. I never did.

Q. Did you hear the evidence of Fred W. Shaeffer wherein he testified that he borrowed the money from you to purchase the land, he had some conversation with you regarding the purchase of the land?

A. I heard the conversation.

Q. State fully all you know about the Shaeffer transaction.

A. Mr. Shaeffer came to me one day and said that he had been talking with Mr. Dwyer about getting a timber claim, and said that he hadn't the funds necessary to pay for the land, and wanted to know if I

(Testimony of George H. Kester.)

would loan him the money to pay for the land, and later he came in one day and said that it was time for him to prove up, and wanted the money to pay for the land at the land office, and I took his note for the amount that he would require, and either that day or the next day he came and handed me the final receipt from the land office for the purchase of the land, simply, I suppose, to hold as a sort of security for the loan; and within a short time after that I purchased the land [2822—2492] from him, after looking the matter up and seeing what sort of a claim he had.

Q. Did you hear his evidence wherein he stated that you paid his expenses up to the land?

A. I never paid any expenses for him of the land; I remember that he used to get advances against his salary, he did on several occasions.

Q. His salary as janitor of the bank?

A. As janitor of the bank; yes.

Q. Did you ever have any conversation with him that you would give him \$100.00 for his right and you pay all expenses? A. No, sir.

Q. Did you hear the evidence of Clarence Robnett wherein he stated that he overheard a conversation between you and Shaeffer, wherein he stated that you agreed to pay him \$100.00 for his right and him deed the land to you? A. Yes, sir.

Q. Did you ever have any such conversation as that? A. No, sir.

Q. When was it that the negotiations began for the purchase of the Shaeffer land, in relation to the time he made final proof?

(Testimony of George H. Kester.)

A. After he had made final proof.

Q. And you agreed on the price, did you?

A. Yes, sir.

Q. And you paid the purchase price?

A. Yes, sir.

Q. What disposition have you made of that land?

A. That land has been sold.

Q. Do you remember to whom it was sold?

A. I think that land was sold to the Potlatch Lumber Company. [2823—2493]

Q. And you received the purchase price, did you?

A. Yes, sir.

Q. Did you make any statement, convey any information to the purchaser about how you got that land, how you obtained it? A. No, sir.

Q. Do you know Carrie M. Maris?

A. I don't know her, never knew her that I remember of, but I knew who she was.

Q. You heard her testify at Spokane, did you?

A. No, I didn't hear her testify.

Q. Did you hear Clarence W. Robnett's evidence relative to the character of her transaction?

A. Yes, sir.

Q. What do you know, if anything, concerning Carrie D. Maris acquiring title to a tract of land?

A. I know nothing whatever about her acquiring title to the land, and the first that I had to do in any respect with that land was when Robnett came to me one day at the bank and said that he had a claim up there the other side of Pierce City, near the forest reserve, that he had been offered \$1,500.00 for, by Mr.

(Testimony of George H. Kester.)

Cameron, I think he said, and that he had been holding the land for \$1,600.00, that it was a pretty good claim, and he felt that it was worth more than \$1,500.00, and that he didn't want to sell it for \$1,500.00, but that he felt like he had to sell it, and wanted to know if I wouldn't look the matter up and see if I couldn't pay him \$1,600.00 for it. And I think I called Mr. Dwyer up, I think I got in communication with Mr. Dwyer at Pierce City, and asked him to go out over that land and make a report as quick as he could on it. And he went out and looked the land over and came back and reported to me that it was a good buy at \$1,600.00; and I then told Robnett that I would buy the claim for \$1,600.00. He would have been very glad and [2824—2494] willing to have sold it for \$1,500.00 if I wouldn't have paid him the \$1,600.00, as far as that is concerned, but I felt that it was worth \$1,600.00, and I was willing to pay the \$1,600.00, and the transaction was closed, and that is the very first that I knew about it.

Q. Did you have any conversation with him concerning his agreement with Carrie D. Maris for the purchase of the land before she made final proof?

A. Not that I remember of, in no way, at all.

Q. Did you have any notice or knowledge of any prior agreement that he had for the purchase of the land before she made her final proof? A. No, sir.

Q. And you had no notice or knowledge—

A. None whatever.

Q. You had no conversation with Carrie D. Maris

(Testimony of George H. Kester.)

at all? A. No, sir.

Q. Do you know John H. Little? A. Yes, sir.

Q. Do you know anything about his acquiring title to a tract of land under the timber and stone laws of the United States? A. No, sir. [2825—2495]

Q. Have you any interest in that tract of land?

A. No, sir.

Q. Do you know Ellsworth M. Harrington?

A. I know nothing about that.

Q. You have no interest in that tract of land, either? A. No, sir.

Q. And this Wren Pierce; do you know Wren Pierce? A. No, I don't.

Q. You have no interest in that tract of land, either? A. No, sir.

Q. Do you know Benjamin F. Bashor?

A. Yes, I know Mr. Bashor.

Q. Have you any interest in that tract of land?

A. No.

Q. Do you know anything about his acquiring title to it? A. No, sir.

Q. Do you know Francis M. Long, and John H. Long, and Benjamin F. Long?

A. I know some of them; I know John Long; I don't particularly know either of the others.

Q. Do you know anything about their acquiring title to these tracts of land mentioned in the bills?

A. No, sir.

Q. You have no interest in them, either?

A. No, sir.

Q. Do you know Bertsell H. Ferris?

(Testimony of George H. Kester.)

A. Yes, I know Mr. Ferris.

Q. Do you know anything about his acquiring title to land? A. No, sir.

Q. You have no interest in that land, either?

A. No, sir.

Q. Do you know George Ray Robinson? [2826—
2496] A. I don't think I know him.

Q. Have you any interest in that tract of land?

A. No, sir.

Q. Do you know anything about his acquiring title to any land, or the sale of it? A. No, sir.

Q. You have no interest in that land?

A. No, sir.

Q. Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice; you have already testified to all you know concerning their acquiring title to the land and their sale of it? A. Yes, sir.

Q. Do you know Fred. E. Justice? A. I do.

Q. And Fred. E. Justice is now deceased, is he?

A. Yes, sir.

Q. And do you know anything about his acquiring title to land?

A. I know that he did acquire title to the land.

Q. And what do you know about a sale of it?

A. I purchased from him, after he had proved up.

Q. Did you have any understanding or agreement with him about purchasing the land, before he made final proof? A. No, sir.

Q. Edgar H. Dammarell; you have already testified to all you know concerning his acquiring title to land? A. Yes, sir.

(Testimony of George H. Kester.)

Q. There are certain entrymen mentioned in bill 407, Mr. Kester, known as the Steffey entrymen, designated as Mary A. Loney, Frank J. Bonney, James T. Jolly, Effie A. Jolly, Charles S. Myers, Jannie Myers, and Clinton E. Perkins. Do you know anything about their acquiring title to land under the timber and stone laws of the United States, and their subsequent sale of it to Kester and Kettenbach? [2827—2497] A. I know that we did buy.

Q. Will you state fully all that you know about it, and what connection you had with it?

A. Well, about all I know about this transaction is that we bought several claims there from Mr. Steffey, on the information of Mr. Dwyer as to the value of the land; that is, there were part of them that we bought on estimates that Mr. Dwyer O. K.'d, and there were some that we bought without his O. K.

Q. Do you remember what ones were bought without Mr. Dwyer's O. K.?

A. I believe it was Mrs. Bonney and Mrs. Jolly, if I remember correctly.

Q. Do you remember whether it was Mrs. Loney or Mrs. Bonney?

A. Or Mrs. Loney, I guess; perhaps that is it.

Q. Now, what was the circumstances? Why was it that Mr. Dwyer didn't O. K. those purchases?

A. Well, Mr. Steffey said that Dwyer wouldn't locate them because he didn't think there was enough timber on them.

Q. And how did you come to buy them?

A. Well, he says that there were some claims that

(Testimony of George H. Kester.)

we had bought that were exceptionally good claims, and he thought that these ought to be taken on the average.

Q. Now, I will ask you to state whether or not you had any notice or knowledge of any understanding or agreement that Mr. Steffey had with these entrymen, before they filed or before they made their final proof? A. No, sir.

Q. When was the negotiations begun for the purchase of these lands, in relation to the time when they made final proof?

A. After they made final proof, in every case.

Q. After they made final proof? A. Yes, sir.
[2828—2498]

Q. Do you remember the first thing that was brought to your notice or knowledge or attention concerning the purchase of these lands?

A. Well, as to the particular land, only when they were ready for sale, after they had made their final proof.

Q. Have you read the evidence of Mr. Steffey that he gave when he was upon the stand? A. Yes.

Q. Did you read his evidence wherein he testified that he had a conversation with Mr. Dwyer, in your presence, before the entrymen filed on their lands, concerning the sale of these lands to you, and that he told you that one of the claims was better than the Dell Maris claim, and that either you or Mr. Dwyer said if it was you would have a champagne supper, or words to that effect?

A. I believe that something of that kind occurred,

(Testimony of George H. Kester.)

but that was at the time of the purchase of the Clint. Perkins claim, as I remember it—at the time that claim was purchased; and that was his reasons for the consideration, as I remember, in that deed at that time.

Q. And was the deed executed at that time?

A. Yes, sir.

Q. And it was after the final proof had been made on all of the claims?

A. Well, I think that occurred at the time of the closing up of that Clint. Perkins deal.

Q. I see that you included a consideration of \$1,250.00 in the Clint. Perkins deed. I will ask you if you remember what you gave for that claim, whether or not the consideration mentioned in the deeds are the exact consideration? A. Yes, sir.

Q. \$1,250.00; is that what you paid Mr. Steffey for it?

A. \$1,250.00, yes, sir, was paid for this claim.

Q. I will ask you to look at the deed of James T. Jolly and Effie [2829—2499] A. Jolly, and state whether or not the consideration mentioned in that deed is what you paid Mr. Steffey for that land?

Mr. GORDON.—Jolly, is that?

Mr. TANNAHILL.—Jolly, yes.

Mr. GORDON.—How much is the consideration?

WITNESS.—\$850.00.

Mr. TANNAHILL.—Q. And also the deed of Effie

A. Jolly, state how much you paid for that claim?

A. \$900.00.

Q. I will ask you to look at the deed of Charles E.

(Testimony of George H. Kester.)

Loney and Mary A. Loney, and ask what you paid for that claim? A. \$1,000.00.

Q. I will ask you to look at the deed of Jannie Myers and Charles S. Myers, and ask you what you paid for that 80 acres? A. \$450.00.

Q. I will ask you to look at the deed of Mary A. Loney and Charles E. Loney, and ask you what you paid for that particular tract of land? A. \$950.00.

Q. Look at the deed of Frank J. Bonney and Ada Bonney, and I will ask you what you paid for that particular tract of land? A. \$950.00.

Q. I will ask you to look at the deed of Charles S. Myers and Jannie Myers, and ask you what you paid for that tract of land? A. \$1,000.00.

Q. Now, did you pay this money to the entrymen, or was the settlement made with Mr. Steffey?

A. I think that practically all of those were made with Mr. Steffey. He brought the deeds in and got the money for them.

Mr. TANNAHILL.—I see there is one exhibit here, marked “Defendants’ Exhibit ‘A’ for Identification,” the affidavit of Charles S. Myers, [2830—2500] that don’t seem to have been introduced in evidence. It was simply marked for identification, and I will ask to have that introduced in evidence.

Said affidavit was marked by the Reporter as Defendants’ Exhibit “A.”

Mr. TANNAHILL.—Q. Mr. Kester, I will ask if you had any understanding or agreement—

Mr. GORDON.—Wait a minute. I object to that

(Testimony of George H. Kester.)

proposed exhibit as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. —with any of these entrymen, for the purchase of their land, prior to the time they filed upon it, or prior to the time they made their final proof? A. No, sir.

Q. I will ask you, Mr. Kester, if you have read or heard the evidence of Norman Jackson, concerning some conversation he claims to have had with you relative to the filing of some scrip, or filing on some State lands, or the leaving out of some State lands? Did you hear the evidence, or have you read it?

A. I heard his evidence at Moscow.

Q. I will ask you what conversation you had with Mr. Jackson concerning these matters, if any?

A. I had a conversation with Mr. Jackson one evening when he came up here to make that selection. I met him on the street down either in front of the hotel or down near the bank, and I was in my buggy and I asked him to go and take a little ride with me. We rode up the street, and I explained to him that I had filed some scrip in the land office, and that they had rejected it on account of the sixty-day prior right of the State, and that I had filed this scrip with the idea that the State wouldn't make any selections in those townships; that if he had taken the scrip I would withdraw it and would file it upon other lands; but if he hadn't taken it I would proceed with the appeal and perfect the title. [2831—2501]

Q. Is there anything further that you can think of that took place between you?

(Testimony of George H. Kester.)

A. Well, he stated that he had taken the land; that he had selected the scrip.

Mr. GORDON.—Do you mean that?

WITNESS.—That he had selected the land.

Mr. GORDON.—Well, upon which the scrip was filed?

WITNESS.—Yes; the scrip which had been rejected in the land office.

Mr. TANNAHILL.—Q. Do you know John P. Roos? A. Yes, sir.

Q. Did you hear him testify concerning a conversation he claimed to have had with you with reference to the purchase of his right? A. Yes.

Q. I will ask you to state what conversation you had with Mr. Roos, if any?

A. As I remember it, I met Mr. Roos on the street and asked him what kind of a claim he had, or something to that effect, and he stated that he had lost the claim that he had filed on, on account of some conflict or something, and I asked him why he didn't get another one. He said that he didn't know where he could find one, and wanted to know if I knew where there were any lands that could be filed on. I told him I thought there were some up in the Clearwater, and he asked me something about the value of them, and I gave him an idea of the value, and, well he said he wanted to get a better claim than that, and there was nothing said about any right, or acquiring his right, or anything of the kind. He is mistaken about that.

Q. Did you ever attempt to purchase his right?

(Testimony of George H. Kester.)

A. No.

Q. Did you hear the evidence of Wynn Peffley, concerning a conversation he had with you? [2832—2502]

A. Yes; and I don't remember any conversation with him, either.

Q. Did you hear the evidence of Sam. Hutchings concerning a conversation he claims to have had with you or some of the defendants? A. Yes.

Q. State whether or not you ever had any such conversation.

A. No, I never had any such conversation.

Q. Did you ever tell Mr. Hutchings that you would give him \$200.00 for his right?

A. No, sir.

Q. How long have you known Clarence W. Robnett? A. Oh, for 20 years.

Q. Was he an employee of the Lewiston National Bank at the time you was—at any time you was employed there? A. Yes, sir.

Q. During what time?

A. I think he was employed in the Lewiston National Bank in about 1892, I believe.

Q. Up to what time?

A. Well, up till 1907—July, 1907,—while I was connected with the bank.

Q. In what capacity was he employed?

A. Well, he first came in as assistant bookkeeper, and was later in full charge of the books.

Q. Where was his desk? Where did he usually work?

(Testimony of George H. Kester.)

A. His desk was over on the north side of the room.

Q. About how far from William F. Kettenbach's private office?

A. Well, about 20 feet from the door of Mr. Kettenbach's private office; that is, at one point; one point may have been closer.

Q. I will ask you to state whether or not he was ever considered a confidential man down in the bank?

A. In no way whatever.

Q. I will ask you if you have frequently talked over business [2833—2503] matters in Mr. Kettenbach's private office with various parties?

A. Yes, sir.

Q. And have you had occasion to observe to what extent conversations could be heard from Mr. Kettenbach's private office into the interior of the bank, where the various employees of the bank worked?

A. Yes, sir.

Q. State whether or not an ordinary conversation can be heard from Mr. Kettenbach's private office into the interior of the bank, to where the employees worked. A. No, sir.

Q. State whether or not an ordinary conversation can be heard and understood from Mr. Robnett's desk, or the bookkeeper's desk, where he worked.

A. No, sir.

Q. Did you hear Mr. Robnett testify in Spokane, wherein he gave his evidence, especially beginning on page 1631 of the record? You heard him testify, did you? A. Yes, sir.

Q. I will ask you if you ever had a conversation

(Testimony of George H. Kester.)

with William F. Kettenbach, in the Lewiston National Bank, in the presence of Clarence W. Robnett, in substance as follows:

“Q. Now, what was the discussion that these two gentlemen had?

“A. The timber matters, of other people locating around from out of Moscow, and the people in Lewiston were commencing to get interested, so Mr. Kester and Mr. Kettenbach discussed it quite often, in regards to going into the timber business themselves, and brought up Mr. Dwyer’s knowledge of the timber, and that he was a timber man from the east, Minnesota, and so it kind of got to be general conversation there, until along in March, some time in March or April, why, Mr. Kester and Mr. Kettenbach were talking about the timber situation, and they stated that they believed they could make a great deal of money out of the timber if they could get in connection with Mr. Dwyer [2834—2504] and form a partnership and let Mr. Dwyer do all the work in the timber.”

Did you ever have any such conversation as that with Mr. Robnett? A. No, sir.

Q. Or with Mr. Kettenbach in the presence of Mr. Robnett, or at all? A. No, sir.

Q. “Question. Now, was anything said at that time relative to the money end of the transaction?”

To which Mr. Robnett replied: “No, there wasn’t anything said in regards to that. They went on ahead and stated, though, talked about Mr. Dwyer’s knowledge of the timber, and they spoke of some

(Testimony of George H. Kester.)

timber that he knew about, claims that he had already cruised and had knowledge of, said he could put people on.”

Did you have any such conversation as that?

A. No, sir.

Q. In the presence of Mr. Robnett, at any time?

A. No, sir.

Q. Did you have the following conversation with Mr. Robnett, to which Mr. Robnett testified: “Well, I met George in the bank, and I said, ‘George, I have had a talk with Will and he told me to come and see you,’ and I told him I had overheard their conversations and heard them talking in regards to going into the timber with Bill Dwyer and locating people on claims, and says, ‘Now, if there is any way I can get into it, I am going to get in and make some money out of the timber too,’ and George says, ‘I will be only too glad to help you out, and I want to see you make some money, but all the claims we know of at the present time that have been cruised, we have people to put on them, but if any time we have got any timber, any claims, and you have got any entrymen or can get anybody that will locate and sell their claims to us for one or two hundred dollars, we are willing to pay that. We want to know, though, we don’t want to handle anyone but what we know will turn their claims over after the proof is made.’ ”

Did you have [2835—2505] any such conversation as that with Clarence W. Robnett?

A. No, sir.

Q. Did you have the following conversation with

(Testimony of George H. Kester.)

Mr. Robnett: "He said, 'Clarence, I don't see how you can get in with us at the present time, that, on account of the timber we have cruised, that we know about, that we have entrymen for at present, we have entrymen for that that will sell their right for one to two hundred dollars, but if you can furnish us any more at any time when we haven't any entrymen, we will treat you right in it, as long as you don't interfere with anything we have under headway or any of the claims we want. If you want to locate anybody and go into it on your own hook it is perfectly satisfactory to us and we will see that you get all the money you need. But any time that you have any claims in your control that we want, why, we want to have the preference right over anybody else.' "

Did you have any such conversation as that with him? A. No, sir.

Q. Mr. Robnett also testified:

"Q. Now, was anything further said at that time as to the arrangement they had with the people?

"A. He says, 'We don't take anybody up to the timber except the ones we have an understanding with that after the proof that they deed the claim over for whatever we agree with them.' It would range from \$100.00 to \$200.00, according to the entryman."

Did you have any such conversation as that with him? A. No, sir.

Q. Mr. Robnett also testified:

"Q. Now, state how you happened to go on that trip." Meaning a trip into the timber.

(Testimony of George H. Kester.)

“A. Well, along about the last of April or the first of May, Mr. Kester told me that Dominick Cameron had located, cruised out and surveyed out some claims up beyond Pierce on one of those little townships that were coming in, and that there was about eighteen claims, and that [2836—2506] Will Kettenbach was going to take a couple, and that each one of us could get in there and take a claim for ourselves, and they would be ready to go up some time during that month, and he wanted me,—wanted to know if I knew of anyone that we could put up there to hold the two claims down, and I told him I thought a normal school student by the name of Joseph McGhee would do it.”

A. Well, I think that there was something about that McGhee proposition; that is, I wanted to get one claim up there, and as I remember it the claim that Clarence wanted was near that one, and that McGhee was to build the cabin, or do some improvements there, in the meantime—to make the required improvements for a squatter’s claim; and that is all that I remember about it.

Q. Mr. Robnett also testified, in response to the following question:

“Q. Was anything said between you and Mr. Kettenbach relative to what you were to do with these claims?

“A. Yes, there was. I asked George the exact condition of the land up there, and how soon it would probably be surveyed, and about how long it would be before it would be thrown open, and he stated that

(Testimony of George H. Kester.)

the surveyors were in there now, and we would get in there and get our cabins before the surveyors came along, and we would hold it down, and he had made arrangements with the man that had charge of that to make a notation on the maps relative to our particular claims so as to show up on the plats when they came into the land office. He thought we would perhaps be able to file that fall."

Do you remember any such conversation as that in the presence of Mr. William F. Kettenbach?

A. No, sir.

Q. And he also testified in response to the following question:

"Q. Well, what else was said in that conversation about the cabins?

"A. He stated that Dominick Cameron had arranged to have the [2837—2507] cabins built on the claims every so far apart down the creek, and that they would be completed by the time we got up there. I told him I would go in with him and we would go up there, and that I would see this normal school student, McGee, in the next day or two."

Did you have any such conversation as that?

A. No, sir.

Q. Mr. Robnett also testified, in response to the following question:

"Q. Now, state what you and Mr. Kester did when you got up to these claims.

"A. I got up early in the morning and went out in one direction, and Mr. Kester went out in another;

(Testimony of George H. Kester.)

we got back to the cabins about noon, and Mr. Kester says, 'Clarence, I have picked out a claim,' and he says, 'There seems to be more claims allotted here than there are people for them, and so I picked out one claim here, and after dinner we will go down and look it over and see what you think about it, and if it is satisfactory we will arrange for McGee to hold this claim down,' and so I says, 'All right.' "

Was there anything of that kind occurred?

A. No, sir.

Q. He also testified: "So after dinner we went down to the claim and looked it over, and talked about the amount of timber there was on the claim, and he told me that he thought Joseph McGee could hold the claim down, and that when it came time to file, if he had to file a homestead, he could file a homestead, and then relinquish, and either file a timber and stone entry on it or one of the rest of us file, and whatever we made out of it we would stand equally, and the expenses. I told him that was all right, that I would see McGee, and we went back to the cabin and I had a talk with Mr. McGee, and Mr. Kester and I and McGee had a talk together, and we went over the whole plan that Mr. Kester and I had outlined, and he agreed to that."

Did you have any such conversation as that?

[2838—2508] A. No, sir.

Q. Mr. Robnett also testified concerning an alleged conversation between you and Mr. Lambdin, as follows: "Well, Mr. Lambdin came into the bank and had a talk with Mr. Kester at the window, either at

(Testimony of George H. Kester.)

the Cashier's window or the Assistant Cashier's."

Do you remember of any conversation of that kind with Mr. Lambdin? A. No, sir.

Q. He also testified: "Why, George went into Mr. Kettenbach's office and stated, 'Well, I have seen Lambdin on the street, and he has agreed to go up and file on a claim for \$100.00 and deed it over after proof.' And Will asked George, 'Do you know whether he is all right?' And George stated, 'Yes, I do.' And Will stated that if George knew he was all right, for him to go ahead and make the arrangements for Bill to take him up into the timber."

Did you have any such conversation as that?

A. No, sir.

Q. Mr. Robnett also testified:

"Q. Who wanted to know that?

"A. Mr. Lambdin; and George told him he would arrange for that with Bill, that Bill Dwyer would take care of him and pay all expenses, and 'Now,' he says, 'suppose after I file I need some money, some expenses, will it be all right if I can get a little and you can deduct it out of the \$100.00 I will get for my right,' and George says, 'Yes, I think we can arrange that all right.' And I don't know as there was any particular date set at that time for him to go up to the timber, but anyway Mr. Kester was to let him know. Mr. Lambdin, I believe, was working at the laundry at this time, and he was to let him know there."

Was there any such conversation as that occurred?

A. No, sir.

(Testimony of George H. Kester.)

Q. Mr. Robnett also testified, in answer to the following question: [2839—2509]

“Q. Well, now, any that you can remember after the filing?

“A. Yes; shortly after the filing, why, Mr. Lambdin came into the bank and wanted to get some money from Mr. Kester, and Mr. Kester let him have the money; I think it was \$25.00, and took his note for it.”

Was there anything of that kind occurred?

A. I think Mr. Lambdin borrowed some money there on security. He may have borrowed some small amount from the bank.

Q. Was there anything said about that it should be deducted from the \$100.00 he should get for his right?

A. Nothing whatever.

Q. Mr. Robnett also testified to overhearing a conversation between you and the witness Shaeffer, in which he stated:

“A. It was a few days before his trip into the timber to take up his claim, to see his claim before filing.

“Q. Where was this conversation?

“A. In the working room, main body of the Lewiston National Bank. It was along in the evening, after the bank had closed.” Mr. Kester and Mr. Shaeffer were the parties.

“Q. Now, tell us what was said.

“A. George and I were in the bank there together; I was working on the books, and Mr. Shaeffer came in to do the janitor work, and George says, ‘Fred, I

(Testimony of George H. Kester.)

have spoken to Clarence about looking after your work when you go up to see your claim, so that it will be tended to, and so as soon as Mr. Dwyer is ready to go up, why I will let you know, and you can go up and see the claim, if the price that I spoke of, of \$100.00, for your right is satisfactory to you,' and Fred says, 'Yes.' "

Did you have any such conversation as that?

A. No, sir.

Q. He also testified: "Mr. Kester came in and says, 'Clarence, do you know where Fred Shaeffer is,' and I says, 'I think he is down in [2840—2510] the furnace-room,' and he says, 'I want to see him relative to taking up a timber claim,' and he says, 'I will go down and hunt him up.' "

Did you have any such conversation as that with Clarence W. Robnett? A. No, sir.

Q. Mr. Robnett also testified, in response to the following question:

"Q. Now, after the part of the conversation that you have detailed in which Mr. Kester had talked with Mr. Shaeffer in your presence, and Mr. Shaeffer had said all right to the proposition that was made, was anything further said in that conversation, any other arrangements made between Kester and Shaeffer?

"A. Why, Kester asked him about the expense money, if he needed any money to go up there to see the land to pay his expenses, and he says, 'No, I have got some,' and George told him, he said, 'If you need any more Bill Dwyer will look after you and pay the expenses.' "

(Testimony of George H. Kester.)

Did any such conversation as that occur?

A. No, sir.

Q. Mr. Robnett also testified: "I don't know whether it took place that day or not, but it was after when George asked me about the janitor work; he told me that Shaeffer was going to go up into the timber and take up a timber claim and they were going to pay him \$100.00 for his right. Now, it might have been after Fred had gone away I had another talk with Mr. Kester in which I asked him about the Shaeffer claim and asked him if Fred was going to get a good claim, and he said, 'Yes, a good claim,' and he said, 'I offered Fred \$100.00 and told him it would help pay for that lot up there that he bought,' and he said, 'It seemed to please him very much, and he was perfectly satisfied to sell his right for \$100.00.' "

Did you have any such conversation as that with Mr. Robnett? A. No, sir.

Q. Mr. Robnett also testified: [2841—2511]

"Q. Was anything said by Mr. Kester at that time as to the value of the claim?

"A. He said it was worth about \$3,000.00."

Did you make any such statement as that to Mr. Robnett? A. No, sir.

Q. He also testified:

"Q. Now, I will ask you what, if anything, you know of the various timber claims that Kester and Kettenbach were connected with from that time on?

"A. Yes.

"Q. Now, how did you know that, Mr. Robnett?

(Testimony of George H. Kester.)

“A. From various conversations, also in assisting them in a great many different ways, also in making out plats, and loaning them my pencils to make the check-marks in their books, and talking with them in regards to the entrymen as they were marking off the names of the entrymen that had filed, after they had filed on them.”

Did anything of that kind occur with Mr. Robnett?

A. No, sir.

Q. Mr. Robnett also testified:

“Q. Now, do you ever remember of any conversation between any of the defendants and Mr. Kester as to what he should say when he made his proof?

“A. Why, yes, they discussed it there, and Mr. Kester told Mr. Shaeffer that Mr. Dwyer would inform him in regard to the questions he should answer and how they should be answered, and I don't know but what he went over with him a portion of the questions himself; it seems to me he did in one of the conversations there in the bank.”

Did anything of that kind occur?

A. No.

Q. “Question. Now, do you remember whether this conversation was relative,—I will ask you which papers this conversation was relative to, the filing papers or the final proof papers? [2842—2512]

“A. Why, in regards to the filing, Mr. Kester and him had a conversation then, and he told him that Mr. Dwyer would go up to the land office with him and see to his filing; and when it came down to the proof, relative to the questions there, he told him

(Testimony of George H. Kester.)

that Mr. Dwyer would tell him how to answer the questions on final proof.”

Did you have any such conversation as that with him? A. No, sir.

At this time a recess was taken until two o'clock P. M. [2843—2513]

At two o'clock P. M. the hearing was resumed.

GEORGE H. KESTER, a witness heretofore called in behalf of the defendants, and duly sworn, resumed the witness-stand for further direct examination, and testified as follows, to wit:

Direct Examination (Continued).

(By Mr. TANNAHILL.)

Q. Mr. Kester, Mr. Robnett testified to a purported conversation which he claims he had with you in the Lewiston National Bank, as follows:

“Q. Now, tell what you know about that.

“A. It was—George says to Will, ‘Shaeffer and Bill are up in the timber to see the claim that Fred is going to file on,’ and he says, ‘I had quite a talk with Shaeffer and told him I would give him \$100.00 for his right, and he is to deed the claim over as soon as he makes proof, and he is going to use the money to make a payment on his lot.’ ”

Did you have any such conversation as that with Mr. Robnett? A. No, sir.

Q. Robnett also says: “Well, he says, ‘they will be back’—Mr. Kettenbach asked George when they would be back, and he said, ‘They will either be back this evening or to-morrow evening.’ ”

Was there any such conversation as that took

(Testimony of George H. Kester.)

place? A. No, sir.

Q. He also testifies:

“Q. Anything else said about it?

“A. Why, he says, ‘What is the value of that claim,’ and he [2844—2514] says, ‘It is worth \$3,000.00 or better.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. Robnett also testifies to hearing a conversation between you and Will. Kettenbach regarding John Roos and Sam. Hutchings, in which he states:

“Q. Well, state what it was and where it was.

“A. It was in Mr. Kettenbach’s private office.

“Q. Well, who did the talking?

“A. Why, Mr. Kester came in and says, ‘Will, I have seen Johnny Roos and Sam. Hutchings out on the street, and I have been talking to them about taking up timber claims, and I believe they will go up into the timber and file, and will deed over their claims for a couple of hundred dollars apiece.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. “Question. Do you remember whether Mr. Kettenbach said anything at that time?

“A. He says, ‘That will be all right. Has Bill got some claims for them at the present time?’ And Mr. Kester says, ‘Well, I will see him either this evening or to-morrow morning, and I think that he has.’ ”

Did you have any such conversation as that?

A. No, sir.

(Testimony of George H. Kester.)

Q. On page 1651 of the record Robnett testifies to a conversation which he claims took place between you and Mr. Kettenbach, concerning the witness Ivan R. Cornell, in which he says: "Why, Mr. Kester came into Mr. Kettenbach's private office and said, 'I met an old schoolmate of mine from Portland. He went to school with me at Bishop Scott's Academy, and he seems to be in pretty hard straits, and I spoke to him about taking up a timber claim and that we would give him \$100.00 and he needs the money bad, and I think he is going to take the offer, and I believe we can put him on the claim that Bill Dwyer is holding [2845—2515] down as a home-
stead.' And Will asked George all about him, and wanted to know if he could be depended on, and George says, 'Yes, I think he can; he needs the money, and I believe he will come through and sell his right for \$100.00,' and he says, 'Well, go see Bill and see if he can take him up to the timber, and if everything is all right with you we will go ahead.' "

Did you have any such conversation as that?

A. No, sir.

Q. On page 1652 Robnett also testifies: "It was either inside of the bank or just outside, on the sidewalk in front of the bookkeeper's window, outside on the street, near the iron railing," where he says he seen Ivan R. Cornell.

"Q. Now, was he alone or with whom was he?

"A. He was talking with Mr. Kester."

Now, did you ever talk with Ivan R. Cornell outside of the bank, next to the iron railing that was around the windows? A. I did not.

(Testimony of George H. Kester.)

Q. "Question. Now, what was that conversation?

"A. Why, I seen them there talking, and that is the first time I ever saw him, and when Mr. Kester came in I asked him if that was Cornell, the party he was talking to Mr. Kettenbach about, and he said he was."

Did any such conversation as that take place between you and Robnett? A. No.

Q. Mr. Robnett also testifies:

"Q. Did you hear any conversation between Mr. Cornell and Mr. Kester on that occasion?

"A. No; but I heard one later, in the bank.

"Q. When was that?

"A. It was just before he went up into the timber, and Mr. Kester was talking to him, I think at the cashier's window, and he asked him, [2846—2516] Mr. Kester asked Mr. Cornell when he would be ready to go up into the timber, what time, and he said, 'I can go any time,' and he says, 'Well, we have made arrangements for you to go, and you be down to the train to-morrow morning, and Mr. Dwyer will be there and take you out to the timber and show you the claim. He will pay all your expenses and your filing fee when you come back, up to the land office, and see about your filing and everything is arranged.' Mr. Cornell says, 'All right,' he says, 'I will be there.' "

Did any such conversation as that occur?

A. No, sir.

Q. Robnett also testifies to hearing a conversation between you and Kettenbach and others, about the time he made final proof, in which he says:

(Testimony of George H. Kester.)

“A. Mr. Cornell; he seemed to be rather out of sorts in regards to something, and didn’t seem to be willing to come through according to the agreement, and him and Mr. Kester talked for quite a while, and after they got through I asked Mr. Kester what was the trouble, and he says, ‘He is a little out of sorts and don’t want to come through for the \$100.00, but I guess he will come through all right, and everything will be all right.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. Mr. Robnett also testified:

“Q. Now, did Mr. Kester say anything else relative to what he had done for—

“A. Yes; he says, ‘I picked him up out here on the street in hard circumstances, and loaned him \$10.00 to help him get along, and gave him a chance here to make a hundred dollars, and now, since he is working and got a little money he don’t seem to appreciate that, but yet I think he will come through and everything will be all right; he will make the deed and accept the \$100.00, and deduct what I have already paid him.’ ”

Did you have any such conversation as that with Robnett? [2847—2517] A. No, sir.

Q. Or with Mr. Kettenbach? A. No, sir.

Q. Or with anyone else? A. No, sir.

Q. On page 1654 of the record Robnett further testifies, in response to the following question:

“Q. Do you remember whether Mr. Kester was there or not?

“A. Well, now, there was several at one conver-

(Testimony of George H. Kester.)

sation that took place in Mr. Kettenbach's office, where Mr. Dwyer and Mr. Kettenbach and Mr. Kester were present, all three of them.

“Q. Now, who was the spokesman at that conversation? Tell the conversation as well as you can.

“A. They were discussing in regards to the homesteads, homestead entries of the timber, that were just thrown open, and Bill Dwyer stated that he was going to contest all those entrymen and locate them, and Will Kettenbach asked if there was any limitation to contests, to how many contests one party could file, and Mr. Dwyer said, no, there wasn't, he could file as many contests as he wanted to, and he could put whoever he wanted on the timber if he won out, and Will told him to go ahead and contest them and get all the claims that he could.”

Did you have any such conversation as that, or hear any such conversation as that between Dwyer and Kettenbach? A. No.

Q. Robnett also testifies:

“Q. Did Mr. Dwyer discuss the character of these entrymen, or how they had located on the homesteads?

“A. He said, ‘They are simply holding down the claims under the homestead to beat the State out, to keep anybody else out, and as soon as—they intend to relinquish and file a timber and stone entry on it, and I am just going to beat them to it before they get a chance to relinquish [2848—2518] their homestead filing.’ ”

Did you hear Dwyer make any such statement as that? A. No, sir.

(Testimony of George H. Kester.)

Q. Robnett also testifies, in answer to the following question:

“Q. Now, after Mr. Kettenbach had made the assertion and asked the question that you have detailed here, did you state whether or not Mr. Dwyer said anything as to what he was going to do with the claims that it had been suggested that contests be filed upon?

“A. He says, ‘I have got plenty of entrymen to put on all the good claims I can get and contest them out,’ and he says, ‘They don’t know, when you file contests, whether I am going to locate people on them or file scrip on them.’ ”

Did you hear any such conversation as that?

A. No, sir.

Q. Was there ever any arrangement between you and Kettenbach and Dwyer, or any of you, about the filing of contests on any of these lands whatever?

A. No, sir.

Q. Was there ever any understanding or agreement that you should get people to file on lands at any place? A. No, sir.

Q. On page 1656 of the record Robnett also testifies in regard to a conversation he says took place in regard to Jackson O’Keefe:

“Q. I will ask you to state whether or not you were ever a party to a conference between Mr. Jackson O’Keefe and any or all of the defendants?

“A. I was present at a number of conversations that took place between Mr. Kester and Mr. O’Keefe, and Mr. Kester and Mr. Kettenbach and Mr. O’Keefe. Well, it was more in the shape of a—

(Testimony of George H. Kester.)

the bank-room there, the inside of the building was more in the shape of an L, and just about over here the—it was along in the winter, or rather the fall of 1903, and the spring of 1904. [2849—2519]

“Q. Now, where was the conversation, and between whom was it?

“A. Why, Mr. Kester and Mr. Kettenbach and Mr. O’Keefe came out of the directors’ room; they was in there having a talk, and they stopped in there while Mr. O’Keefe was waiting for the stage to go to Asotin, and Mr. Kester asked him regarding the securing of certain entrymen to take up claims, and he spoke about certain parties in Asotin that he would get.”

Did you have any such conversation as that with Mr. O’Keefe? A. No, sir.

Q. On page 1661 Robnett testifies as follows:

“Q. Now, did you hear anything of the arrangements that they had, or were there any?

“A. Yes; they spoke then relative to what, about what they would want, and he said, ‘Oh, I think you can get them for perhaps \$150.00 apiece, maybe you may have to pay them \$200.00, but anyway you can get them at what is right, and we can depend on them.’ ”

Did you have any such conversation as that?

A. No.

Q. On page 1662 Robnett also testifies:

“Q. Now, do you remember the occasion of these gentlemen that you have mentioned making their proof?

“A. Why, prior to the time of making proof Mr.

(Testimony of George H. Kester.)

O'Keefe was in the bank, and George told him whenever—he says, 'Jack, whenever you are ready for the proof—the day of the proof—why, you come over here and get the money and give the boys the money, and then take them up to the land office, and afterwards why you can look after making up the transfers—look after that—take the matter in hand and look after it, and see that everything goes through all right.' ”

Did you have any such conversation as that?

A. No, sir.

Q. On page 1665 Robnett also testifies concerning a conversation in regard to Mr. Goldsmith: [2850—2520]

“Q. Well, state what you can relative to the conversation, as near as you can.” That means relative to the conversation which he claims he heard about Mr. Goldsmith.

“A. Well, the gentlemen were sitting in Mr. Kettenbach's private office, and George spoke up and asked if there was any way that Bill could get the position, so that he could go up there and pick out this land that the State was going to select, and also to catch on to land that they could get a hold of, and Will Kettenbach spoke up and said, 'Yes, I think I can arrange that'; he says, 'Goldsmith, I think, will do what I want him to, and I will have a talk with him and see if I can't have it arranged.' Well, George stated if it could be done why it would very likely help them out a great deal, and be a good thing.”

Did you have any such conversation as that?

(Testimony of George H. Kester.)

A. No, sir.

Q. Did you have anything whatever to do with the appointment of Dwyer as a cruiser, or assistant to Mr. Goldsmith? A. No, sir.

Q. Robnett also testified, in response to the following question:

“Q. Was anything said as to how it was to help them out?

“A. ‘Of course,’ he says, ‘if he goes up into the timber there to make the selections of the State land, why he could leave out the claims that we want, and make a notation of them, so that we can locate the claims.’ ”

Was there any such conversation as that?

A. No, sir.

Q. Did you ever have any such thing as that in mind at all? A. No, sir.

Q. Robnett also testifies, in response to the following question:

“Q. Well, now, do you know anything further that was said at that time?

“A. Well, Mr. Kester said, ‘Well, Will, you see Mr. Goldsmith and see what can be done, and if we can arrange that Bill can go up into the timber with him,’ and Will said, ‘All right, I will get word [2851—2521] to Mr. Goldsmith to come in and see me.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. On page 1669 Robnett also testifies:

“A. Well, after the State had made the filing of conflict claims, Mr. Kester and also Mr. Kettenbach

(Testimony of George H. Kester.)

both made the statement that there would be plenty of timber left after the State went through; that they wasn't going ahead with the contest of entrymen; that they just had all the timber they wanted for all their entrymen, and that included a number of fine homesteads up there of people that were squatting on the land."

Did you have any such conversation as that?

A. No, sir.

Q. On page 1689 of the record C. W. Robnett testifies concerning a conversation he says took place between you and Mr. Colby, in which he testifies, in response to the following question:

"Q. Where was this?

"A. This was in the main body of the bank, the main body of the working-room of the bank, at Mr. Kettenbach's desk. Mr. Colby came into Mr. Kettenbach's private office and around to Mr. Kester's desk, where he was sitting, and pulled a chair up there and sat down right beside him. He says, 'George, I came in to talk to you in regards to the timber matters.' He says, 'Fred Emory last winter cruised out some claims in 39-3, and we located six men on them this spring, and we are to furnish them with money and all expenses to prove up, and are to pay them \$200.00 for their right. Now, we have fallen down on being able to get this money, and wanted to know if you can go ahead and take this up under the same arrangement and take care of these parties.' "

Did you have any such conversation as that?

A. No, sir.

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